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BARCELONATECH

*The problematic aspects of the  
identification of the responsible party  
in seafarers' employment contracts:  
a comparative analysis of the impact  
of the Maritime Labour Convention  
2006 to the identification of the  
responsible shipowner in maritime  
labour law*

**Sandra Lielbarde**

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PhD programme in Sciences and Nautical Engineering

# **The Problematic Aspects of the Identification of the Responsible Party in Seafarers' Employment Contracts**

(A comparative analysis of the impact of the Maritime Labour  
Convention 2006 to the identification of the responsible shipowner in  
maritime labour law)

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This thesis is dedicated to my family.

## Abstract

**Keywords:** MLC, seafarer, shipowner, labour contract, maritime safety, maritime law.

Considering the importance of shipping in world trade, the proficient and competent seafarers employed in the maritime industry play a key role in ensuring the international transport of goods by sea. The safety of the ship, cargo and environment is inseparable from the employment and labour conditions on board. It is recognised that a ship with a high level of good employment conditions tends to maintain a high standard of safety operation.<sup>1</sup> And the welfare and well-being of seafarers is achieved through a regime of maritime labour standards both at a national as well as an international level.<sup>2</sup>

The International Labour Conference on 2006 adopted the Maritime Labour Convention, (MLC) which entered into force in August 2013 and is considered to be important as international regulation with regards to the protection of the seafarers' rights, often referred to as the seafarers' bill of rights.

This dissertation aims to address one issue related to the effective protection of seafarers' rights – the identification of the final responsible person (the shipowner) in respect of seafarers' claims – and to research what is the effect of the MLC on this problem.

The dissertation contains analysis of the relevant international legal acts (UNCLOS, ILO and IMO conventions, UNCCRO's, and Vienna Convention on Consular Relations 1963), EU legislative acts related to implementation of the MLC, and of national law implementing the MLC (Denmark, Estonia, Finland, Germany, Latvia, Norway, The Philippines, Spain, and The UK), as well as the analysis of the concept of *shipowner* under the MLC.

Next, the dissertation turns to analysis of standard contracts in shipping applicable to the employment of the seafarers, including delegation of responsibility for employment of crew to third parties (seafarer's employment contract (SEA), traditional contracts in shipping, according to which the responsibility over seafarers' employment is delegated by shipowner to other parties, – demise (bareboat) charterparty contracts, ship and crew management contracts and contracts with other intermediaries, collective bargaining agreements, forming part of SEA).

Next, the dissertation describes the different security measures available to the seafarers after entering into force of the MLC. Public law instruments introduced by the MLC are main

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<sup>1</sup> P. Zhang, Edw. Phillips, “*Safety first: Reconstructing the concept of seaworthiness under the maritime labour convention 2006*”, Marine Policy, Volume 67, 2016, p. 57.

<sup>2</sup> Pr. K. Mukherjee, M. Brownrigg, *Farthing on International Shipping*, Springer, 2013, p. 195.

security measures for seafarers today and they are: financial security for seafarers' abandonment and contractual claims, flag State and port State inspection systems, and certification and control of seafarers' recruitment and placement services. A traditional security measure for seafarers' claims under private law, a ship arrest, is also addressed in line with security measures under public law.

In the final part, the dissertation ends with the conclusions and recommendations.

## Preface

Sandra Lielbarde obtained a LL.M in International and European Law from the Riga Graduate School of Law (Latvia) in 2007 and a LL.M in Maritime Law from the joint programme of the World Maritime University and Lund University (Sweden) in 2010. Since 2010, she has been working as the legal adviser to the Maritime Administration of Latvia (MAL). For ten years she has also been a visiting lecturer at the Latvian Maritime Academy. Her main areas of interest are: maritime law, shipping law and maritime labour law.

Since October 2016, she has been a PhD candidate at the Polytechnic University of Catalonia (*Universidad Politécnic de Catalunya*) researching the following: “The problematic aspects of the identification of the responsible party in seafarers’ employment contracts (A comparative analysis of the impact of the Maritime Labour Convention 2006 to the identification of the responsible shipowner in maritime labour law)” under supervision of Director, Dr. Jaime Rodrigo de Larrucea. The choice of subject for the thesis was based on Sandra’s professional experience and interest.

Inspiration to choose the particular subject for a doctoral thesis is mainly related to Sandra’s work. For the first time, she came across these maritime labour issues working as a legal adviser in the MAL. Seafarers, Latvian residents, as well residents from other countries working on Latvian ships, apply to the MAL for assistance to help resolve their claims against a shipowner. In the process of getting acquainted with the facts of the claim, through reviewing a seafarer’s employment contract (SEA), other relevant documents and legal regulations, the following question appears to be present in all cases – *who* is the contracting party to the SEA and, accordingly, the responsible person for the seafarer’s claim? The answer to this question very often is not clear from the first sight. Almost in all cases the SEA, which is primarily the source for the seafarer about his contractual relations, does not give a clear answer with regards to whom is a contracting party. The SEA often contains the reference to the shipowner, manager, or other third parties, but does not state clearly on whose behalf the SEA was signed or to whom the claim can be submitted.

Participating in the Special Tripartite MLC Committee before the International Labour Organization (ILO) in Geneva, representing Latvia in international discussions on the MLC issues, and following work on drafting of national law for the implementation of the MLC in Latvia increased Sandra’s interest on the subject and inspired the motivation to address the problems of the identification of the responsible party to the SEA through academic research. Sandra was lucky to visit *Universidad Politécnic de Catalunya* in Barcelona and meet Director Dr. Jaime Rodrigo

de Larrucea, professor of Maritime Law at *Universidad Politécnica de Catalunya* and practising attorney at law in shipping law, who agreed to supervise her thesis. In 2016, Sandra was admitted to the PhD programme of Nautical Engineering and her journey towards her doctoral degree began.

During the period of her PhD studies, Sandra published the following articles related to the subject of the research:

- “The concept of *seafarer* before and after the Maritime Labour Convention 2016 (comparative analysis of the legal effects of defining legal concept in the shape of legal terminology)”, March 2017, RGSL Research Papers, No. 17. Available at [http://www.rgsl.edu.lv/wp-content/uploads/2017/03/Lielbarde\\_final.pdf](http://www.rgsl.edu.lv/wp-content/uploads/2017/03/Lielbarde_final.pdf)

- “*The concept of “shipowner” under new maritime labour law (MLC, 2006): does the shipowner own the ship? (comparative analysis of national law of Denmark, Finland, Germany, Norway and the United Kingdom)*”, WMU Journal of Maritime Affairs, 2018. Available at: <https://link.springer.com/article/10.1007/s13437-018-0141-8>

- Re- publishing of the article “*The concept of seafarer before and after the Maritime Labour Convention 2016 (comparative analysis of the legal effects of defining legal concept in the shape of legal terminology)*” in Yearbook of Maritime and Oceanic Law, Volume 36 (Annuaire de Droit Maritime et Océanique, T. XXXVI), 2018. Available at: <http://www.cdmo.univ-nantes.fr/admo-dernier-volume-894310.kjsp?RH=1380012194211&RF=1380012521640>

The purpose of the dissertation is to address the problems associated with the identification of the shipowner in maritime labour law and research what is the effect of the MLC to this issue. The subject of the thesis is the comparative analysis of the impact of the MLC to the identification of the responsible shipowner in seafarers’ employment contracts. Objectives of the thesis are following:

- 1) analysis of international legal acts in the areas of maritime labour law and shipping in respect of the problem of the identification of the responsible shipowner;
- 2) analysis of the legal concept of *shipowner* and requirements in respect of the identification of the responsible shipowner under the MLC;
- 3) analysis of national law implementing the MLC concept of *shipowner* and requirements in respect of the identification of the responsible shipowner;
- 4) analysis of provisions in standard contracts in shipping in respect of delegation of responsibility for seafarers’ employment to the third parties;
- 5) comparative analysis of security measures available to the seafarers after the MLC;
- 6) conclusions and recommendations.



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## Abbreviations

|                        |  |
|------------------------|--|
| ABS                    | American Bureau of Shipping  |
| Arrest Convention 1952 | International Convention Relating to the Arrest of Sea-Going Ships, 1952   |
| Arrest Convention 1999 | International Convention on the Arrest of Ships, 1999  |
| BIMCO                  | Baltic and International Maritime Council  |
| BUNKER                 | International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001  |
| BWM Convention         | International Convention for the Control and Management of Ships' Ballast Water and Sediments, 2004  |
| CBA                    | Collective bargaining agreement  |
| CEACR                  | ILO Committee of Experts on the Application of Conventions and Recommendations   |
| CLC                    | International Convention on Civil Liability for Oil Pollution Damage, 1992   |
| COLREG                 | Convention on the International Regulations for Preventing Collisions at Sea, 1972   |
| DMA                    | Danish Maritime Authority  |
| DMLC                   | Declaration of Maritime Labour Compliance  |
| DOLE                   | Department of Labour and Employment of the Republic of the Philippines   |
| ECJ                    | European Court of Justice  |
| EU                     | European Union   |
| FAL                    | Convention on the Facilitation of International Maritime Traffic, 1965   |
| FNV                    | The Netherlands Trade Union Confederation  |
| ICS                    | International Chamber of Shipping  |
| ILC                    | International Labour Conference  |
| ILO                    | International Labour Organization  |
| IMO                    | International Maritime Organization  |
| ISF                    | International Shipping Federation  |
| ISM Code               | International Safety Management Code   |
| ISM Company            | A company stated by the ISM Certificate as responsible for operation of a ship according to the International Safety Management (ISM) Code 1993. |
| ITF                    | International Transport Workers' Federation  |
| ITLOS                  | International Tribunal on the Law of the Sea   |
| JMC                    | Joint Maritime Commission of the ILO   |
| LLMC                   | Convention on Limitation of Liability for Maritime Claims, 1976  |
| LOADLINE               | International Convention on Load Lines   |
| MARPOL                 | International Convention for the Prevention of Pollution from Ships  |
| MCA                    | Maritime and Coastguard Agency   |
| MLC                    | Maritime Labour Convention, 2006   |
| MLC certificate        | Maritime Labour Certificate  |
| MoU                    | Memorandum of Understanding  |
| NAIROBI WRC            | Nairobi International Convention on the Removal of Wrecks, 2007  |

|             |   |
|-------------|---|
| NMA         | Norwegian Maritime Authority  |
| OECD        | Organization for Economic Co-operation and Development  |
| PAL         | Carriage of Passengers and their Luggage by Sea, 1974   |
| P&I         | Protection and Indemnity  |
| POEA        | Philippine Overseas employment Administration   |
| PSC         | port State control  |
| PTMC        | Preparatory Technical Maritime Conference   |
| RS          | Russian Maritime Register of Shipping   |
| RO          | Recognized organization   |
| SEA         | Seafarer's Employment Agreement   |
| SOLAS, 1974 | International Convention for the Safety of Life at Sea, 1974  |
| SRPS        | Seafarer Recruitment and Placement Services   |
| STCW        | International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 |
| STWGMLS     | High-Level Tripartite Working Group on Maritime Labour Standards                                      |
| TWGMLS      | Tripartite Subgroup of the High-Level Tripartite Working Group on Maritime Labour Standards           |
| TFEU        | Treaty on the Functioning of the European Union   |
| Trafi       | Finnish Transport Safety Agency   |
| UK          | The United Kingdom  |
| UNCCRO's    | 1986 United Nations Convention on Conditions for Registration of Ships                                |
| UNCLOS      | United Nations Convention on the Law of the Sea   |
| UNCTAD      | United Nations Conference on Trade and Development  |
| VCLT        | Vienna Convention on the Law of Treaties 1969   |
| III Code    | IMO Resolution A.1070(28) <i>IMO Instruments Implementation Code</i>                                  |



# I Introduction

## 1.1. State of art

### 1.1.1. MLC – seafarers’ bill of rights

The shipping industry, as the lynchpin of global trade, relies on the floating population of 1.6 million seafarers estimated to be serving on internationally trading merchant ships.<sup>3</sup> The work of these seafarers is not only bound by the physical realities of the ship, water, and wind but is also organised within a legal structure that frames how work operates at sea.<sup>4</sup>

The Maritime Labour Convention (MLC) was adopted by the International Labour Conference (ILC) 94th (Maritime) Session in 2006 and entered into force in August 2013; the Convention is considered to be important international regulation as it regards the protection of seafarers’ rights. The MLC consolidates and updates more than 60 international maritime labour instruments (Conventions and Recommendations) adopted by the ILC since 1920. The MLC was adopted in a tripartite process where representatives of governments, shipowners and seafarers were working together. Every provision in the MLC is a result of consensus among all three groups of partners.<sup>5</sup> There is well-founded ground to cite the MLC as a seafarers’ bill of rights. As of 6 January 2020, it has been ratified by 96 countries representing 91 per cent of the world’s gross tonnage in shipping.<sup>6</sup>

The MLC supplements the existing body of international maritime law contained in the International Maritime Organization (IMO) conventions, governing commercial aspects (shipping), maritime safety, and marine pollution control. The MLC has been designed to become a global instrument known as the “fourth pillar” of the international regulatory regime for quality shipping, complementing the key conventions of the IMO: The International Convention for the Safety of Life at Sea (SOLAS), 1974, the International Convention on Standards of Training,

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<sup>3</sup> Austin, C., “*Stable crews are effective crews*”, *Safety at Sea*, Volume 54, Issue 613, 2020, p. 26.

<sup>4</sup> Raffety, M. T., *The Republic Afloat*, Chicago, The University of Chicago Press, 2013, p. 11.

<sup>5</sup> 94th (Maritime) Session of the International Labour Conference, Geneva, 7-23 February 2006. Reports and documents submitted to the ILC, 94th (Maritime) Session, 2006. Report I(1A). Adoption of an instrument to consolidate maritime labour standards. P. 4.-5. MLC text and other preparatory reports and documents are available at: <https://www.ilo.org/global/standards/maritime-labour-convention/text/lang--en/index.htm> Last visited in March 2020.

<sup>6</sup> The MLC ratifications list. Available at: [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300\\_INSTRUMENT\\_ID:312331](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P11300_INSTRUMENT_ID:312331) Last visited in March 2020.

Certification and Watchkeeping (STCW), 1978, and the International Convention for the Prevention of Pollution from Ships (MARPOL), 73/78.

Considering the timeframe within which MLC came into force and became worldwide applicable after its adoption, the MLC can be considered a successful international treaty. There are many maritime conventions which more than ten years after their adoption still have not entered into force and will unlikely come into force in the future in spite of good intentions that initiated their adoption. Adopted in 2006, the MLC already in 2009 after five ratifications (Norway, Liberia, Marshall Islands, and Panama)<sup>7</sup> reached the first criteria necessary for the entering into force of the MLC – ratifications represented over 43 percent of the gross world tonnage, which is over 33 percent of that required for the coming into force of the MLC.<sup>8</sup> On 20 August 2012, the Philippines, which is the largest source of the world’s seafarers, with nearly 700,000, nearly half of who work overseas, submitted its ratification to the International Labour Organization (ILO), becoming the 30th Member to have its ratification registered.<sup>9</sup> Accordingly, the second criteria for the entering into force of the MLC was reached. With the ratification by the Philippines, the MLC was able to come into effect as binding international law on 20 August 2013. To come into force ten years after adoption and to get such a high percentage of membership like the MLC presents a successful story for an international convention.

Notwithstanding the successful adoption and coming into force of the MLC, the work on improving the seafarers’ social security and living and working conditions on board should be continued and it continues. Since its adoption, the MLC has been already amended several times. Work on Amendments 2014 began even before the MLC came into force. The amendments of 2014<sup>10</sup> to the MLC, which came into force on 18 January 2017, detail a shipowner’s responsibility in respect of abandoned seafarers and other contractual claims. According to the MLC Amendments 2014 (A Annex), since 18 January 2017, shipowners are required to have insurance or another system of protection which could cover claims of seafarers in case of abandonment and other contractual claims. A document certifying the above-mentioned has to be on board the ship in a visible place so the seafarers could be informed.

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<sup>7</sup> “Panama and Norway ratify Maritime Labour Convention – Germanischer Lloyd Offers ILO Certification”, 12 February, 2009. Available at: <https://worldmaritimeneeds.com/archives/12536/> Last visited in March 2020.

<sup>8</sup> Article VIII, paragraph 3, MLC.

<sup>9</sup> “Philippines ratification marks global milestone for decent work for seafarers”, ILO press release, 20 August, 2012. Available at: [https://www.ilo.org/global/standards/maritime-labour-convention/WCMS\\_187712/lang--en/index.htm](https://www.ilo.org/global/standards/maritime-labour-convention/WCMS_187712/lang--en/index.htm) Last visited in March 2020.

<sup>10</sup> Amendments of 2014 to the MLC. Available at: <https://www.ilo.org/global/standards/maritime-labour-convention/lang--en/index.htm> Last visited in March 2020.

Amendments of 2016<sup>11</sup> of the MLC relates to *Regulation 4.3 - Health and safety protection and accident prevention* of the MLC. Guideline B4.3.1 – *Provisions on occupational accidents, injuries and diseases* of the MLC was amended to state that an account should also be taken of the latest version of the *Guidance on eliminating shipboard harassment and bullying jointly published by the International Chamber of Shipping and the International Transport Workers’ Federation*. As well, Amendments of 2016 contained amendments to the *Regulation 5.1 – Flag state responsibilities* of the MLC. *Standard A5.1.3 – Maritime labour certificate and declaration of maritime labour compliance* of the MLC was amended to regulate the validity of a Maritime Labour Certificate (MLC certificate) (B Annex) after a renewal inspection completed prior to the expiry of a MLC certificate; but, a new certificate cannot immediately be issued to and made available on board that ship. In such case the competent authority, or the recognized organization (RO) duly authorized for this purpose, may extend the validity of the MLC certificate for a further period not exceeding five months from the expiry date of the existing MLC certificate, and endorse the certificate accordingly. Of course, the condition is that the ship is found to continue to meet national laws and regulations or other measures implementing the requirements of the MLC. Amendments of 2016 to the MLC entered into force 8 January 2019.

The next amendments to the MLC – the Amendments of 2018<sup>12</sup> are on the way to come into force. The expected day of coming into force of the Amendments of 2018 is 26 December 2020. These amendments are very important for ensuring seafarers’ social security in case a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships. Amendments 2018 of the MLC are relating to the *Regulation 2.1 – Seafarers’ employment agreements*, *Regulation 2.2 – Wages* and *Regulation 2.5 – Repatriation*. *Standard A2.1 – Seafarers’ employment agreements* of the MLC is amended to state that a SEA shall continue to have effect while a seafarer is held captive on or off the ship because of acts of piracy or armed robbery against ships, regardless of whether the date fixed for its expiry has passed or either party has given notice to suspend or terminate it. As well *Standard A2.2 – Wages* of the MLC is amended to state that:

*7. Where a seafarer is held captive on or off the ship as a result of acts of piracy or armed robbery against ships, wages and other entitlements under the seafarers’ employment agreement, relevant collective bargaining agreement or applicable national laws, including the remittance of any allotments as provided in*

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<sup>11</sup> Amendments of 2016 to the MLC. Available at: <https://www.ilo.org/global/standards/maritime-labour-convention/lang--en/index.htm> Last visited in March 2020.

<sup>12</sup> Amendments of 2018 to the MLC. Available at: <https://www.ilo.org/global/standards/maritime-labour-convention/lang--en/index.htm> Last visited in March 2020.

*paragraph 4 of this Standard, shall continue to be paid during the entire period of captivity and until the seafarer is released and duly repatriated in accordance with Standard A2.5.1 or, where the seafarer dies while in captivity, until the date of death as determined in accordance with applicable national laws or regulations. (...)*<sup>13</sup>

Amendments of 2018 also contain an amendment to Guideline B2.5.1 – *Entitlement Replace of Regulation 2.5 – Repatriation* of the MLC. The new paragraph 8 of Guideline B2.5.1 states that the entitlement to repatriation may lapse if the seafarer(s) concerned does not claim it within a reasonable period of time to be defined by national law or regulations or collective agreements, except where they are held captive on or off the ship as a result of acts of piracy or armed robbery against ships.

The entering into force of the MLC affected the business of all stakeholders in shipping. Today, completion of crew is often contracted to the management company which contracts further with crewing agencies in different countries for recruitment and placement of the crew. Shipowners' liability insurance provisions had to be adjusted to cover MLC requirements. Additionally, classification societies had to adjust their procedures to be able to check compliance of the seafarers' labour conditions on a ship with the requirements of the MLC to issue a MLC certificate on behalf of the flag State. A flag States' obligation is to implement MLC requirements binding nationally and ensure their effective enforcement. Port State Control (PSC) procedures, accordingly, also were updated by regional organizations of PSC, as well as at the national level.

The main person responsible for implementing standards of the MLC on its ship is the shipowner. The shipowner has an obligation to ensure appropriate working conditions on board a ship, due payment of wages, repatriation of seafarers, and to fulfil other obligations in accordance with international and national law and SEA. In their turn, seafarers have the right to require the shipowner to ensure fulfilment of aforementioned obligations and to be compensated if the shipowner fails to do so.

Even nowadays, there are still shipowners who do not take care of the people who work on their ships, examples being: the crew onboard is left without food and drinking water, has not been paid for their work, and/or cannot go back home because the shipowner does not pay for their repatriation.<sup>14</sup> As of 6 January 2020 about 170 abandoned merchant ships were listed on ILO's

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<sup>13</sup> Amendments of 2018 to the MLC, Amendment to the Code of the MLC, 2006, relating to Regulation 2.2, *Standard A2.2 – Wages*, paragraph 7.

<sup>14</sup> For example, the Malta-registered Svetlana, operated by Victoria Maritime Trading Ltd of Bulgaria, had been detained following a Port State Control inspection by MCA (Maritime and Coastguard Agency) surveyors in Cardiff, Wales, on October 2016. A vessel has been issued with a further detainable deficiency notice after it was discovered the crew had not been paid for many months. See: "Mistreatment of crew on sub-standard ship leads to detention", ITF press release, 28 October 2016. Available at: <https://www.itfglobal.org/de/node/1411> Last visited in March 2020;

*Abandonment of Seafarers Database on reported incidents of abandonment of seafarers (SECTOR).*<sup>15</sup>

To receive reimbursement from dishonest contractual parties, it is necessary to identify this party. When a seafarer needs to submit a claim in regard to payments due for work on board a ship, the seafarer faces the need to identify a potential defendant – the responsible shipowner. It is stressed by the MLC that the MLC Standards should provide seafarers with rights as comparable as possible to those generally available to workers ashore.<sup>16</sup> However, compared to workers ashore, for seafarers, the exercising of their rights is encumbered by features related particularly to international shipping. In respect of the identification of the responsible shipowner, seafarers face several obstacles, characteristic to recruitment and employment in shipping, which are considered below.

### ***1.1.2. Characteristics in shipping as cause of difficulties for the identification of the responsible shipowner***

Several features characteristic to international shipping and seafarers' recruitment and placement cause difficulties for seafarers to identify and reach the responsible shipowner; or to provide help for dishonest shipowners to avoid liability.<sup>17</sup>

A summary of essential aspects of decent work in the maritime context mentioned in the first meeting of the Tripartite Subgroup of the High-Level Tripartite Working Group on Maritime Labour Standards (STWGMLS) in 2002 also reveals some of these characteristics:

*Many changes have occurred in world shipping in recent decades. These changes have strongly influenced the labour market and the conditions of work and life of seafarers. They include the shift of ship management*

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Case of abandonment of *MV Liberty Prudencia* crew in China: *MV Liberty Prudencia* crew was abandoned in China. In March 2017, the outstanding wage bill was excess of 148,000 GBP. See: "Desperate Letter from *MV Liberty Prudencia* Crew", *The Maritime Executive*, 14 April 2017. Available at: <https://maritime-executive.com/editorials/desperate-letter-from-liberty-prudencia-crew> Last visited in March 2020.

<sup>15</sup> See ILO's *Abandonment of Seafarers Database on reported incidents of abandonment of seafarers (SECTOR)*. Available at: [http://www.ilo.org/dyn/seafarers/seafarersBrowse.Home?p\\_lang=en](http://www.ilo.org/dyn/seafarers/seafarersBrowse.Home?p_lang=en) Last visited in March 2020.

<sup>16</sup> See: Regulation 4.1., paragraph 4, MLC.

<sup>17</sup> Also, other researchers have pointed on the problems to discern the seafarers' legal rights caused by unique nature of seafarers' employment. For example, P. J. Bauer, "*The Maritime Labour Convention: An Adequate Guarantee of Seafarer Rights, or an Impediment to True Reforms?*", *Chicago Journal of International Law*, Volume 8, Number 2, Article 12, 2008, p. 645. Available at: <http://chicagounbound.uchicago.edu/cjil/vol8/iss2/12> Last visited in March 2020.

*to specialized companies, the emergence of alternative types of registers, environmental issues, technological developments and port state control. Even more important has been the general thrust of the industry to reduce costs in the face of economic considerations, with an inevitable impact on crew conditions as a consequence.<sup>18</sup> (...) Changes in the shipping industry have resulted in a substantial reduction in the influence of national regulatory regimes, with a corresponding increase of the impact of the international regime, especially with regards to technical considerations. The lack of impact of social and labour standards, however, is evidenced by the relatively low level of ratification of ILO maritime labour standards in relation to IMO conventions.<sup>19</sup>*

Detailed characterization of latest changes in the structure of the shipping industry can be found in ILO document: *The impact on seafarers' living and working conditions of changes in the structure of the shipping industry*<sup>20</sup> from 2001.

Jan Hoffmann and Shashi Kumar,<sup>21</sup> in discussion on the impact of globalisation on maritime business, addressed changes in shipping and their impact on relations between the crew and shipowners:

*Another dilemma facing the global seafarer, especially those working on board open registry vessels, can be attributed to the declining number of traditional ship owners discussed earlier. As ship ownership and operation shift from traditional ship owners to pension funds and conglomerates that seek instant gain from the sale and purchase market (for ships) or from certain tax exemption loopholes, the seafarers' roles and functions have been marginalised and their loyalty made meaningless. With the increasing number of open registry vessels and the outsourcing of ship and crew management (discussed earlier), the relationship between the management entity and the ships' crew may sometimes not exceed the length of a contract today unlike the life-long relationship of the bygone pre-globalisation era. Furthermore, ship managers providing the crew for open registry vessels as well as other fleets often find themselves in a highly competitive market where there is little room for the ongoing training of seafarers, especially given the tendency of some of their principals to switch their management companies frequently. This is truly ironic as the challenges of*

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<sup>18</sup> ILO: An analysis of the essential aspects of decent work in the maritime context, Working paper for discussion at the Tripartite Sub-Group of the High-Level Tripartite Working Group on Maritime Labour Standards (first meeting), doc. STWGMLS/2002/5 (Geneva, 2002), paragraph 4, *supra* note 5.

<sup>19</sup> ILO: An analysis of the essential aspects of decent work in the maritime context, Working paper for discussion at the Tripartite Sub-Group of the High-Level Tripartite Working Group on Maritime Labour Standards (first meeting), doc. STWGMLS/2002/5 (Geneva, 2002), paragraph 43, *supra* note 5.

<sup>20</sup> ILO: The impact on seafarers' living and working conditions of changes in the structure of the shipping industry, Report for discussion at the 29th Session of the Joint Maritime Commission (Geneva, 2001). Available at: [https://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS\\_PUBL\\_9221122379\\_EN/lang-en/index.htm](https://www.ilo.org/global/publications/ilo-bookstore/order-online/books/WCMS_PUBL_9221122379_EN/lang-en/index.htm) Last visited in March 2020.

<sup>21</sup> Sh. Kumar, J. Hoffmann, "Globalization: the Maritime Nexus", Chapter 3 in C. Grammenos (ed.), *Handbook of Maritime Economics and Business*, London, Informa, Lloyds List Press, 2002, p. 25. Available at: <http://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.466.423&rep=rep1&type=pdf> Last visited in March 2020.

*seafaring have never been more than what they are now, despite all the technological advances made by humankind.*

Some of these changes or features of international shipping having an effect on the research question need to be addressed in more detail.

#### **1.1.2.1. Competition and reduction of operational costs**

Shipping companies have always competed for survival and profit and have looked how to reduce operational costs. Operating costs are the expenses connected with the day-to-day running of the vessel (excluding fuel, which is included in voyage costs), together with an allowance for day-to-day repairs and maintenance (but not major dry docking which are dealt with separately).<sup>22</sup> Crew cost is one of the components in the operating costs of a ship. Crewing costs include all direct and indirect charges incurred by the crewing of the vessel, including basic salaries and wages, holiday pay, sick pay, social insurance, pensions, victuals and repatriation expenses. The cost for crewing of a vessel is a high proportion of total ship operating costs. Accordingly, the terms and conditions of employment for seafarers have a direct impact upon ship operating costs. The level of manning costs for a particular ship is determined by the size of the crew and the employment policies adopted by the owner and the ship's flag state. In total, manning costs may account for up to half of operating costs.<sup>23</sup>

Furthermore, in regards to crewing costs varying among vessels, the wages paid to the crews of merchant ships have always been controversial.<sup>24</sup> The MLC under Guideline B2.2.4 – *Minimum monthly basic pay or wage figure for able seafarers* recommends:

*1. The basic pay or wages for a calendar month of service for an able seafarer should be no less than the amount periodically set by the Joint Maritime Commission or another body authorized by the Governing Body of the International Labour Office. Upon a decision of the Governing Body, the Director-General shall notify any revised amount to the Members of the Organization.*

Although this is only a recommendation from the MLC, according to this mechanism, a subcommittee of the Joint Maritime Commission (JMC) of the ILO is taking a *Resolution on the*

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<sup>22</sup> M. Stopford, *Maritime Economics*, 2nd edition, London, Routledge, 1997, p. 161.

<sup>23</sup> M. Stopford, *ibid*, p. 161.

<sup>24</sup> M. Stopford, *supra* note 22, p. 163.

*minimum monthly basic wage figure for able seafarers*. The mechanism for setting the minimum monthly wage for able seafarers is the only one in the ILO that sets the basic wage for any industry.<sup>25</sup> The latest resolution was adopted in 2018,<sup>26</sup> according to which the JMC:

2. Agrees to update the current ILO minimum basic wage for an Able Seafarer to US\$618 as of 1 July 2019, US\$625 as of 1 January 2020 and US\$641 as of 1 January 2021;
3. Agrees that the figures of US\$641 as well as US\$662 as of 1 June 2018 should be used as the bases for recalculation purposes;

As stated by Austin, as crewing is commonly the largest controllable part of the vessel's operating budget, it is often the first to suffer spending cuts as companies try to weather market fluctuations.<sup>27</sup> A shipowner's attempt to reduce the crew costs endanger seafarers' safety and well-being on board a ship, as well as respect for seafarers' social rights.

#### **1.1.2.2. Selection of a flag State as an important economic factor**

Manning represents, by far, the largest item in the direct operating costs of a vessel registered in an economically developed country.<sup>28</sup> The main option to reduce manning costs for shipowners is operating under a flag that allows the use of a low-wage crew and by shopping around the world for the cheapest crew available.<sup>29</sup> Ship registration under one flag or another and flag State responsibilities go together with economic factors. Open registers, termed: offshore, secondary, second or international, most of which have some or all of the characteristics of "flags of convenience"<sup>30</sup> were defined in 1970 by the Rochdale Inquiry into Shipping as registries in which:

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<sup>25</sup> See: "ILO body adopts new minimum monthly wage for seafarers", ILO press release, 21 November 2018. Available at: [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_650599/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_650599/lang--en/index.htm) Last visited in March 2020.

<sup>26</sup> See Resolution *Resolution concerning the ILO minimum monthly basic pay or wage for able seafarers*, Appendix III, para 2 and 3, Final report - Subcommittee on Wages of Seafarers of the Joint Maritime Commission (November 2018), SWJMC/2018/6[ILO\_REF] ISBN 978-92-2-133061-5 (Web pdf)[ISBN]. Available at: [https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS\\_650599/lang--en/index.htm](https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_650599/lang--en/index.htm) Last visited in March 2020.

<sup>27</sup> C. Austin, *supra* note 3, p. 27.

<sup>28</sup> N. P. Ready (author, ed.), R. Coles (ed.), *Ship Registration: Law and Practice (Lloyd's Shipping Law Library)*, London, LLP, 2002, p. 46.

<sup>29</sup> M. Stopford, *supra* note 22, p. 164.

<sup>30</sup> N. P. Ready, *supra* note 28, p. 15:

- (i) the country of registry allows ownership and/or control of its merchant vessels by non-citizens;
- (ii) access to the registry is easy. A ship may usually be registered at a consul's office abroad. Equally important, transfer from the registry at the owner's option is not restricted;
- (iii) taxes on the income from the ships are not levied locally or are low. A registry fee and an annual fee, based on tonnage, are normally the only charges made. A guarantee or acceptable understanding regarding future freedom from taxation may also be given;
- (iv) the country of registry is a small power with no national requirement under any foreseeable circumstances for all the shipping registered (but receipts from very small charges on a large tonnage may produce a substantial effect on its national income and balance of payments);
- (v) manning of ships by non-nationals is freely permitted; and
- (vi) the country of registry has neither the power nor the administrative machinery effectively to impose any government or international regulations; nor has the country the wish or the power to control the companies themselves.<sup>31</sup>

According to Bauer:

*Under current shipping laws, one of the greatest threats to seafarer rights is ships that sail under flags of convenience. This term is used to describe ships that choose to sail under the flag of a nation with notoriously lenient registration requirements and weak labour standards. As a result of these lax labour protections, the shipowners are able to save significant money by providing substandard conditions and benefits to their workers and can attract business by passing on some of these savings to shippers. These cost-cutting techniques endanger seafaring crews and put ships that follow more stringent labour laws at a distinct competitive disadvantage.<sup>32</sup>*

The first registry which became popular for economic reasons was the Panamanian registry, and next – the Liberian registry.<sup>33</sup> Following the crisis of the 1980s, shipowners either abandoned the maritime business or opted for flagging their vessels in open registries. They are frequently used as a tool by shipowners to outsource labour and circumvent safety regulations. By doing so, companies want to keep the cost of shipping goods as low as possible. In 1998, the global fleet became majority-flagged in open registries for the first time, with 51.3 per cent of vessels

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*There is no standard definition of what constitutes a “flag of convenience”, known in more euphemistic parlance as an “open register” or “flag of necessity”. According to Boczek: Functionally, a “flag of convenience” can be defined as the flag of any country allowing the registration of foreign-owned and foreign-controlled vessels under conditions which, for whatever the reasons, are convenient and opportune for the persons who are registering the vessels.*

<sup>31</sup> *Supra* note 20, p. 17.

<sup>32</sup> Bauer, P. J., *supra* note 17, p. 651.

<sup>33</sup> Z. O. Ozcayir, *Port State control*, London, LLP Professional Publishing, 2001, p. 28.

around the globe flying the flag of an open registry. Additionally, according to UNCTAD, 2014, nearly 73 per cent of the world fleet was foreign flagged. When shipowners decide to flag out, they can obtain lower labour costs and reduce the living, working and safety standards on board.<sup>34</sup> Again under UNCTAD, in 2017, more than 70 per cent (70, 01 per cent) of the commercial fleet was registered under a flag different from that of the country of ownership.<sup>35</sup> The same situation occurred in 2019 – more than 70 per cent of the fleet (tonnage) was registered under a foreign flag (72, 38 per cent).<sup>36</sup> In comparison, it can be mentioned that in the 1970's only 22 per cent of the fleet were under flags of convenience.<sup>37</sup>

Due to the popularity of open registries, it has become difficult for seafarers to access the jurisdictions of the flag State, which is primarily liable to exercise both enforcement and adjudicative jurisdictions over the ship and seafarers on board. Chen mentions Chinese seafarers as an example. China has no diplomatic relationship with Panama, which is the flag State with the largest national fleet size. Considering geographical distance and diplomatic barriers, to seek remedies through the jurisdiction of flag States such as Panama, the Bahamas or Liberia is inconvenient for Chinese seafarers.<sup>38</sup>

According to Stopford, because of the interdependence between legal regulation and ship operating economics, in no area of maritime law has there been greater interplay between economics and regulation than regarding the issue of flag States and the choice of register, which has become a major issue for shipowners.<sup>39</sup> In a shipping company, as in any other commercial

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<sup>34</sup> C. Bagoulla, P. Guillotreau, “*Shortage and labor productivity on the global seafaring market*”, in Patrick Chaumette. *Seafarers: an international labour market in perspective*, Gomylex, 2016, 978-84-15176-67-1, p. 18. Available at: <https://halshs.archives-ouvertes.fr/halshs-01469666/document> Last visited in March 2020.

<sup>35</sup> UNCTAD Review of Maritime transport 2017, table 2.3. at p. 28, p. 32. Available at: [http://unctad.org/en/PublicationsLibrary/rmt2017\\_en.pdf](http://unctad.org/en/PublicationsLibrary/rmt2017_en.pdf) Last visited in March 2020.

<sup>36</sup> UNCTAD Review of Maritime transport 2019, table 2.6. at p. 37. Available at: [https://unctad.org/en/PublicationsLibrary/rmt2019\\_en.pdf](https://unctad.org/en/PublicationsLibrary/rmt2019_en.pdf) Last visited in March 2020.

<sup>37</sup> L. Meifeng, F. Lixian, “*Flag choice behaviour in the World Merchant Fleet*”, *Transport Science*, 2011. Cited in E. Krastiņš, *Kuģniecība Latvijā, Rīga, Autora apgādā*, 2019, p. 341.

<sup>38</sup> G. Chen, D. Shan, “*Seafarers' access to jurisdictions over labour matters*”, *Marine Policy*, Volume 77, March 2017, p. 1-8. Available at: <https://www.humanrightsatsea.org/wp-content/uploads/2017/10/Seafarers-access-to-jurisdictions-over-labour-matters-Desai-Shan.pdf> Last visited in March 2020.

<sup>39</sup> M. Stopford, *supra* note 22, p. 438:

*There are four principal consequences of choosing to register in one state rather than another:*

- 1) *Tax, company law and financial law;*
- 2) *Compliance with maritime safety conventions;*
- 3) *Crewing and terms of employment (the company is subject to flag state regulations concerning the selection of crew and their terms of employment);*
- 4) *Naval protection.*

legal entity, all decisions are taken to maximize the profit and minimize private costs. Vessels have been flagged from one country to another mostly for an economic advantage. One of such advantages which is significant has been the confidentiality of who is the actual beneficial owner of the ship.<sup>40</sup>

Registration under a flag of convenience does not, of course, *ipso facto* exempt an owner from taxation in the country in which he is domiciled for fiscal purposes. However, the ownership structure of a flag of convenience ship may make it virtually impossible to identify the true beneficiaries of the profits arising from the vessel's operation or the capital gain, if any, from her sale.<sup>41</sup>

The problems raised by this practice have occupied the ILO since as early as 1933:

*13. It is precisely because of the operation of the principle of flag State duties that the practice arose of making flag transfers, i.e. re-registering ships in "open-register" countries where costs of various kinds are lower, and instead of flying the flag of the country of the ship's beneficial owner or manager (which may be an international group, financial institution or small operator) flying a flag of convenience.*<sup>42</sup>

Also, the Organization for Economic Co-operation and Development (OECD) brought up this problem, setting up in 1998 a European Union (EU) Committee on Harmful Tax Competition and in an agreement by the G7 Finance Ministers in the same year. In 2000, the OECD Council issued a "blacklist" of tax havens, including countries operating open registers. An ambitious timetable of measures was proposed to be implemented between 2001 and 2005, starting with a plan to achieve international standards and move towards the compulsory disclosure of beneficial interests of ownership and to the exchange of tax information within the OECD.<sup>43</sup>

According to Piniella all measures taken to stop this process did not reach any result:

*The "battle" to stop this process by which shipowners have increasingly abandoned the traditional maritime flags, known as "flagging out" seems to have been lost, according to the figures that are published each year on the worlds merchant marine fleets. It must also be stated that the subsequent international measures have*

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<sup>40</sup> A. Mandaraka-Sheppard, *Modern Maritime Law*, London, Routledge-Cavendish, 2007, p. 278.

<sup>41</sup> N. P. Ready, *supra* note 28, p. 43.

<sup>42</sup> Report of the CEACR General Survey of the Reports on the Merchant Shipping (Minimum Standards) Convention (No. 147) and the Merchant Shipping (Improvement of Standards) Recommendation (No. 155), 1976, ILC, 77th Session 1990. Paragraph 13, p. 8. Available at: <http://www.ilo.org/public/libdoc/ilo/P/09661/> Last visited in March 2020.

<sup>43</sup> N. P. Ready, *supra* note 28, p. 43.

*not facilitated the resolution of this confusion with relation to that term, neither in the wording of Article 91.1 of the UNCLOS, nor in the failed UNCCRO's which remains be calmed in the list of international agreements awaiting ratification, with only twenty four adhesions to date. Nor can it be said that the campaign of the ITF to stop the proliferation of these flags has achieved very much. (...) In fact, these days, it is often impossible to determine the identity (and hence the nationality) of the owners of many merchant ships currently in active use.<sup>44</sup>*

Shipowners take advantage of the “flags of convenience” system for various reasons, including: tax benefits, simplified ship registration, increased access to areas of the world, and, of greatest concern, lax legal standards.<sup>45</sup> Whereas, seafarers do not have any advantage from this system, the very opposite – this system often creates difficulties to identify a responsible shipowner and, accordingly, may be seen as a burden for the effective exercising of their rights.

### **1.1.2.3.        *The corporate structure of shipowner***

Vessels used for commercial purposes always have some form of corporate ownership or corporate operation (shipping companies). The corporate form used may be varied – limited liability companies without personal owner’s liability or limited partnerships with only certain owners bearing full liability or companies in which all the owners bear individual liability. Quite often, ownership is by one company, while management is entrusted to another company.

The corporate structures in shipping, as well as in any other business, allow for limiting liability of the owner. When a vessel is registered under the flag of convenience it is owned by a corporation. This corporation is specifically established for that purpose and it does not have any other asset other than the vessel. A separate owning company will generally be established in respect to each vessel if the shipowner has more than one ship.<sup>46</sup> In such cases, if the ship is wrecked the owning company will not have other assets by which to pay for seafarers’ claims.

Both international and national regulation require the information about shipowners to be included in the SEA. But even having a written SEA signed by a shipowner is not always enough to identify a responsible employer. Legally, the shipowner is the person who operates a ship for

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<sup>44</sup> Fr. Piniella, J. M. Silos, Fr. Bernal, “*The protection of Seafarers: State Practice and the emerging new International regime*”, State Practice and International Law Journal, Volume 2, Issue 1, Spring 2015, p. 51.

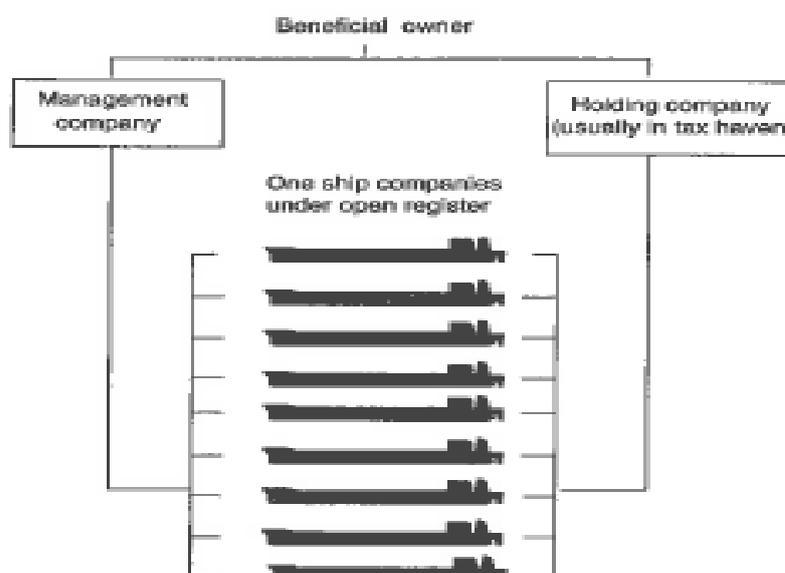
<sup>45</sup> Sh. Frawley, “*The Great Compromise: Labour Unions, Flags of Convenience and the Rights of Seafarers*”, 19 Windsor Rev Legal & Soc Issues 85, 88-91 (2005), cited in P. J. Bauer, *supra* note 17, p. 646.

<sup>46</sup> Z. O. Ozcayir, *supra* note 33, p. 31; N. P. Ready, *supra* note 28, p. 45.

his own account.<sup>47</sup> The information about the legal shipowner can be obtained from the ship register. In practice, the registered owner may be a single-ship company with few assets where the ship is run by a management company based in another flag state. Typically, in shipping, ship operation is done by different persons, at least different persons in legal terms.

According to Stopford a typical shipping company structure consists of: the beneficial owner, one-ship companies, a holding company and a management company.

**Figure 1. Shipping company structure according to M. Stopford.<sup>48</sup>**



**FIGURE 12.3 Shipping company structure**  
Source: Martin Stopford, 1997

Beneficial ownership of the shipowning, management and holding companies takes the form of bearer shares which, because of their ease of transferability, render the identification of the shareholders effectively impossible and that help to insulate beneficial owners of the ship from authorities seeking to establish tax and other liabilities.<sup>49</sup>

Most ships will be subject to some form of charterparty and it will be necessary to clarify whether there is a demise (or bareboat) charterer who will have a commercial interest in the operation of the ship but would not normally have liabilities to a seafarer, as, in fact, they do not

<sup>47</sup> T. Falkanger, L. Brautaset, H.J. Bull, *Scandinavian maritime law - The Norwegian perspective*, Oslo, Universitetsforlaget, 2011, p. 149.

<sup>48</sup> M. Stopford, *supra* note 22, p. 439.

<sup>49</sup> N. P. Ready, *supra* note 28, p. 45; M. Stopford, *supra* note 22, p. 439.

operate the ship.<sup>50</sup> While in principle time chartering involves the hiring of a vessel with its crew, time charter forms are sometimes used or agreements made placing a vessel under a more complete control of the hirer, the crew being provided by a management company that may be controlled by the charterer.<sup>51</sup>

The use of third-party recruitment agencies implies the loss of the direct link between shipping companies and seafarers that existed in the past.<sup>52</sup> The position of management companies and crewing agents, usually contracted by the shipowner to recruit the crew, in contractual relation with the shipowner is based on the law of agency. The general principle of the law of agency is that the agent is acting on behalf of the principal and he has no direct liability against claims which may arise under the SEA. An agent can sign the contract disclosing its principal or not. If the name of principal is not disclosed, the status of the person signing the SEA and acting on behalf of the shipowner, as well as the identity of the shipowner, is unclear.

For seafarers, it is essential to identify the correct defendant between several persons involved in the seafarers' recruitment and placement process at an early stage. It is not easy because of the many intermediaries involved in the recruiting of the seafarer and in the concluding of SEA, creating a corporate veil which provides substantive protection to the shipowner. According to Fitzpatrick, “[i]n theory, the contractual position should therefore be relatively straightforward but for the individual seafarer, the contractual identity of the actual employer may not be clear.”<sup>53</sup>

Accordingly, international corporate arrangements, which exist for reasons quite unrelated to shipping, between: agents, trust companies and other intermediaries, private limited companies, and other forms of legal entities not required to publicly disclose the identities of members, help to ensure shipowners' anonymity<sup>54</sup> and make a burden for seafarers to identify a responsible person

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<sup>50</sup> D. Fitzpatrick, M. Anderson (eds), *Seafarers' rights*, Oxford, Oxford University Press, 2005, p. 171.

<sup>51</sup> H. Tiberg, J. Schelin, *Tiberg & Schelin on maritime & transport law*, Stockholm, Axel Ax:son Johnson Institute for Maritime and Other Transport Law - Stockholm University, 2009, p. 71.

<sup>52</sup> M. Bloor, H. Sampson, (2009) '*Regulatory enforcement of labour standards in an outsourcing globalized industry the case of the shipping industry*', *Work, Employment & Society*, 23(4): 711-726; J. Fei, (2011) '*An empirical study of the role of information technology in effective knowledge transfer in the shipping industry*', *Maritime Policy & Management*, 38(4): 347-367. Both sources referred in Baum-Talmor, P., '*Careers and Labour Market Flexibility in Global Industries: The Case of Seafarers*', School of Social Sciences Cardiff University, PhD thesis, February 2018, p. 30. Available at Academia database. Last visited in March 2020.

<sup>53</sup> D. Fitzpatrick, *supra* note 50, p. 175.

<sup>54</sup> *Ownership and control of ships*, Report of Maritime Transport Committee of Directorate for science, technology and industry of OECD, March 2003, p. 3. Available on: <http://www.oecd.org/sti/transport/maritimetransport/17846120.pdf> Last visited in March 2020.

for seafarers' claims. The study by the OECD<sup>55</sup> found that it is very easy, and comparatively cheap, to establish a complex web of corporate entities to provide very effective cover to the identities of beneficial owners who do not want to be known. The shipowner is interested in maximizing profitability, while minimizing the risk of exposing beneficial owners to personal liability. Ownership structures may be changed, and the actual corporate defendant may cease to exist after a claim arises. Therefore, it could be difficult to obtain information about real holders of assets. Courts are not always willing to pierce the corporate veil.<sup>56</sup>

The line between the actual ship owner, operator or technical manager of the vessel is not completely clear in shipping and, therefore, complicates enforcement of legal instruments;<sup>57</sup> seafarers' rights contained in these instruments, as well, can create complications for a shipowner, himself. As an example, the case *Ferryways NV v Associated British Ports [2008]* can be mentioned. There was a dispute in the case regarding who was the employer of the seafarer. The SEA was signed by the agent on behalf of the crew manager as the employer. Relations of the crew manager and owner were based on the Baltic and International Maritime Council (BIMCO) crew management agreement known as the "Crewman A Cost Plus Fee" according to which the crew manager is acting as agent of the owner. Accordingly, the owner can be considered as the undisclosed principal of crew manager. Consequently, SEAs do not contain information on the final responsible person in this case. Without going into the details of the case, Figure 2 below presents a typical situation in shipping where there is a chain of different entities operating in different countries and it is disputable which of them is an ultimate responsible person.

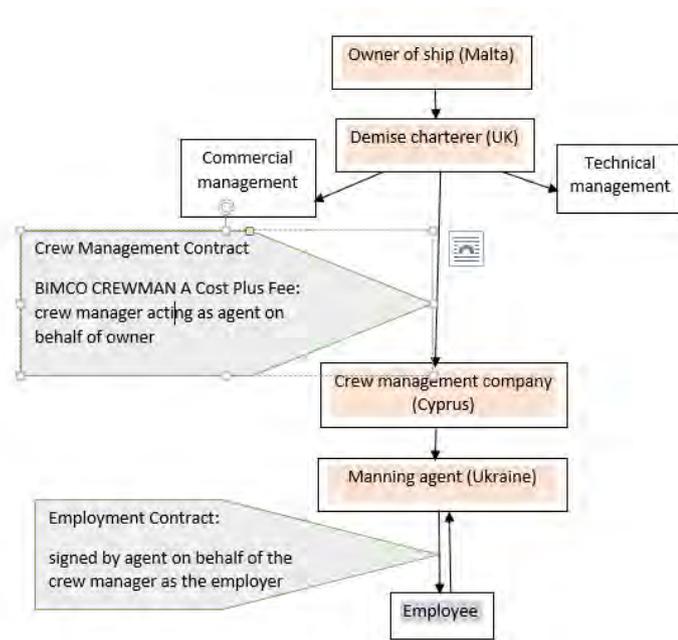
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<sup>55</sup> *Ibid*, p. 3.

<sup>56</sup> D. C. Jackson, *Enforcement of Maritime Claims*, London, LLP, 2005, p. 267.

<sup>57</sup> S. Knapp & Franses, Ph.H.B.F, "Analysis of the Maritime Inspection Regimes - Are ships over-inspected?" (No. EI 2006-30). Report / Econometric Institute, Erasmus University Rotterdam, 2006, p. 2. Available at: [//hdl.handle.net/1765/7895](http://hdl.handle.net/1765/7895) Last visited in March 2020.

**Figure 2. Contracts and parties acting on behalf of shipowner in *Ferryways NV v Associated British Ports* [2008].<sup>58</sup>**



#### 1.1.2.4. Jurisdiction and applicable law to seafarers' cases

Seafarers are distinguished by nationality and jurisdiction. Therefore, the international nature of maritime labour causes another complexity for seafarers looking for compensation from the shipowner. According to Bauer, the greatest difficulty faced by seafarers is the fact that their legal rights are often hard to discern, as are the jurisdictions in which these rights can be enforced; as, most seafarers are hired through recruiting agencies which may or may not be located in the seafarer's home country, which potentially introduces another nation's laws into the fray.<sup>59</sup> Furthermore, according to Chen, employment relations in the maritime industry have become fragmented: the beneficial shipowner's domicile, the site of ship operation, and the workplaces and residences of seafarers are subject to different jurisdictions. Four choices of applicable laws and jurisdictions are relevant with maritime labour disputes; namely: the flag State, port State, labour-supplying State and the State of a shipowner where the shipowner is domiciled or operates

<sup>58</sup> *Ferryways NV v Associated British Ports* [2008] EWHC 225 (Comm) (14 February 2008). Available at: <https://www.bailii.org/ew/cases/EWHC/Comm/2008/225.html> Last visited in March 2020.

<sup>59</sup> P. J. Bauer, *supra* note 17, p. 651.

business.<sup>60</sup> To determine jurisdiction and the proper law is a complicated problem for seafarers in case of labour dispute. It should be mentioned that the MLC does not address matters of maritime labour jurisdiction comprehensively. Paragraph 5 of Title 5. *Compliance and enforcement* of the MLC states:

*4. The provisions of this Title shall be implemented bearing in mind that seafarers and shipowners, like all other persons, are equal before the law and are entitled to the equal protection of the law and shall not be subject to discrimination in their access to courts, tribunals or other dispute resolution mechanisms. The provisions of this Title do not determine legal jurisdiction or a legal venue.*

This thesis also does not address this problem. However, it is as relevant a problem as the identification of a responsible party. Moreover, both questions are closely related. Under law in many countries the employment relationship is a sufficient link to ascertain adjudicative jurisdiction between the State of the shipowner(s) and the seafarer.

Every maritime labour dispute where several persons having responsibility for employment of the same seafarer are located in different States involves questions not only about the final responsible person, to whom a claim should be submitted, but also questions on applicable law and jurisdiction. This, of course, adds additional difficulties in terms of costs and time for a seafarer in the exercising of his rights; as, usually these disputes involve court proceedings before several courts and courts of appeals. For example, in case C-384/10, *Jan Voogsgeerd v Navimer SA*,<sup>61</sup> the ECJ dealt with a number of issues concerning the Rome Convention on the law applicable to contractual obligations and the determination of that law when employees carrying out work in more than one contracting State. For purposes of this research, no need exists to go into details about legal considerations on applicable choice of law in this case. However, this case could be seen as a typical example of disputes between a seafarer and shipowner, the court proceedings and results of which are affected by shipping practice, containing discussion on applicable law and responsible party before several courts in different countries. Facts in *Jan Voogsgeerd v Navimer SA* are as follows:

On 7 August 2001 at the headquarters of Naviglobe NV ('Naviglobe'), an undertaking established at Antwerp (Belgium), Mr Voogsgeerd entered into a contract of employment of indefinite duration with Navimer (Luxemburg). The parties chose Luxembourg law to be the law applicable to that contract. Mr Voogsgeerd served as Chief Engineer on ships, which belonged to

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<sup>60</sup> G. Chen, D. Shan, *supra* note 38, p. 1-8.

<sup>61</sup> *Jan Voogsgeerd v Navimer SA*, ECJ case C-384/10, Judgment of the Court (Fourth Chamber) of 15 December 2011. Available at: <http://curia.europa.eu/juris/liste.jsf?language=en&num=C-384/10> Last visited in March 2020.

Navimer. On 8 April 2002 Mr Voogsgeerd received a letter on dismissal. On 4 April 2003, Mr Voogsgeerd commenced proceedings against Naviglobe and Navimer before the *arbeidsrechtbank te Antwerpen* (Labour Court, Antwerp), seeking an order that those undertakings, jointly and severally, make a payment in lieu of notice in accordance with the Belgian Law of 3 July 1978 on employment contracts, plus interest and costs. In support of his application, Mr Voogsgeerd claimed that, based on Article 6(1) of the Rome Convention, the mandatory rules of Belgian employment law were applicable, irrespective of the choice made by the parties regarding the applicable law. In that respect, Mr Voogsgeerd claimed that he was bound, by his contract of employment, to the Belgian undertaking Naviglobe, and not to the Luxembourg undertaking Navimer, and that he had principally carried out his work in Belgium where he received instructions from Naviglobe and to where he returned after each voyage. By judgment on 12 November 2004, the *arbeidsrechtbank te Antwerpen* declared that it lacked jurisdiction to rule on the action against Navimer. Mr Voogsgeerd lodged an appeal against that judgment before the *arbeidshof te Antwerpen* (Higher Labour Court, Antwerp). That court rejected the claim against Naviglobe as unfounded, on the ground that the applicant in the main proceedings had not adduced evidence to show that he had been seconded to that company. Mr Voogsgeerd appealed on a point of law against the section of that judgment concerning Navimer, which therefore remains as the only defendant in the main proceedings. The referring court observes that, insofar as that evidence is accurate, Naviglobe, which is established in Antwerp, could be regarded as being the business with which Mr Voogsgeerd is connected for his actual employment, for the purposes of Article 6(2)(b) of the Rome Convention and decided to stay the proceedings and to refer the following questions to the European Court of Justice (ECJ) for a preliminary ruling. After receiving the ECJ judgement on 15 December 2011, the national proceeding in Antwerp was continued.

Accordingly, this dispute about termination of an employment contract involved court proceedings on several levels, including proceedings before the ECJ; as applicable, Belgium law, Luxemburg Law and EU Law were discussed and the overall time of all proceedings has been close to ten years (information on the national proceeding after the ECJ judgement is not available).

### ***1.1.3. Importance of uniform implementation and enforcement of the MLC***

The above-mentioned problems faced by seafarers demonstrate the necessity of uniform international regulation, as well as the importance of its uniform implementation nationally and effective enforcement internationally. 'Through uniform implementation and enforcement, all seafarers

would all seafarers would be entitled to the equal protection of the law, irrespective of the flag State, the State of residence, nationality 'or any other characteristic of either a seafarer or entities involved in the seafarers' employment.

The effectiveness of international regulation is based on uniform and effective implementation of it domestically. This is especially true about international regulation in shipping. In 2005, Lillie wrote that seafarers work on seagoing ships, which, due to the flag of convenience system of ship registration and transnational recruitment, are to a large extent disembodied from any unified national regulatory or social context.<sup>62</sup> Because of the inherent international character of shipping and the insolvencies and hardship generated by conflicts in practical and legal affairs for maritime law, it is necessary to attain international uniformity which can be achieved by international legislation such as conventions.<sup>63</sup> Effective implementation and enforcement of seafarers' rights established by the MLC very much depends on every flag state being a Member of the MLC.

In order to be more effective than previous maritime labour regulations, the MLC introduces a series of new features that are different in both form and character from the maritime labour standards existing before. These innovations constitute an important supplement to the maritime labour regulatory regime and can be seen as instruments to ensure uniform implementation of MLC standards.

The MLC under Title 5 *Compliance and enforcement* contains regulations which specify each Member's responsibility to fully implement and enforce the principles and rights set out in the Articles of the MLC as well as the particular obligations provided for under its Titles 1, 2, 3 and 4. Before the MLC, the flag States and port States paid more attention to maritime safety, marine pollution prevention and the competency of the crew, compared to maritime labour matters. ILO conventions, the regulatory framework of maritime labour before the MLC, did not contain regulation for an effective system for controlling and supervising maritime labour issues in Member States. Title 5 *Compliance and enforcement* of the MLC specifies flag State, port State and labour-supplying responsibilities.

The MLC states that each Member shall establish an effective system for the inspection and certification of maritime labour conditions, ensuring that the working and living conditions

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<sup>62</sup> N. Lillie, "Union Networks and Global Unionism in Maritime Shipping", *Relations industrielles / Industrial Relations*, Volume. 60, number 1, 2005, p. 88-111. Available at: [https://www.riir.ulaval.ca/sites/riir.ulaval.ca/files/2005\\_60-1\\_4.pdf](https://www.riir.ulaval.ca/sites/riir.ulaval.ca/files/2005_60-1_4.pdf) Last visited in March 2020.

<sup>63</sup> Pr. K. Mukherjee, *Maritime legislation*, Malmo, WMU Publications, 2002, p. 113., 144.

for seafarers on ships that fly its flag meet, and continue to meet, the standards in the convention.<sup>64</sup> In establishing an effective system for the inspection and certification of maritime labour conditions, a Member may, where appropriate, authorize public institutions or other organizations (including those of another Member, if the latter agrees) which it recognises as competent and independent to carry out inspections or to issue certificates or to do both. In all cases, the Member shall remain fully responsible for the inspection and certification of the working and living conditions of the seafarers concerned on ships that fly its flag.<sup>65</sup> The fact that the ship has been duly inspected by the Member whose flag it flies and that the requirements of the MLC have been met is evidenced by a MLC certificate, complemented by a Declaration of Maritime Labour Compliance<sup>66</sup> (DMLC) (B Annex). Regulation 5.1 - *Flag State responsibilities* of the MLC contains detailed requirements for flag State inspections and issuance of the MLC certificate, a more detailed analysis of which is given in the following chapter.

As regards to foreign ships calling in the port of a Member, the MLC requires that inspections in a port shall be carried out by authorized officers in accordance with the provisions of the MLC Code and other applicable international arrangements governing PSC inspections in the Member state.<sup>67</sup> Each Member shall accept the MLC certificate and the DMLC as *prima facie* evidence of compliance with the requirements of the MLC (including seafarers' rights). Accordingly, the inspection in its ports shall, except in the circumstances specified in the MLC, be limited to a review of the MLC certificate and DMLC.<sup>68</sup>

According to the MLC, in addition special attention during flag state inspections and port state inspections should be given to seafarers' complaints.<sup>69</sup> Detailed analysis of MLC requirements on dealing with the seafarers' complaints are presented in Chapters 5.2.2. and 5.3.1. of the thesis.

Mukherjee wrote in 2013 that “[t]he physical, sociological and psychological well-being of the seafarer is a matter of prime if not paramount importance. But this is not always readily recognised or given practical effect, in real terms, at the ground level despite the many laudable

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<sup>64</sup> Regulation 5.1.1, paragraph 2, MLC.

<sup>65</sup> Regulation 5.1.1, paragraph 3, MLC.

<sup>66</sup> Regulation 5.1.1, paragraph 4., MLC.

<sup>67</sup> Regulation 5.2.1, paragraph 3, MLC.

<sup>68</sup> Regulation 5.2.1, paragraph 2, MLC.

<sup>69</sup> See Standard A5.1.4, paragraph 5 and 10, MLC; Regulation 5.1.5, MLC; Standard A5.2.1, paragraph 1 (d), paragraph 3, MLC; Regulation 5.2.2, MLC.

statements and declarations entrenched in numerous legal instruments of maritime and non-maritime varieties.”<sup>70</sup> There is a hope that the MLC will bring more respect to the seafarers’ rights in practice.

In respect of ensuring effective enforcement of the MLC, it can be mentioned that compared to the IMO conventions applicable to commercial shipping, the MLC, as are ILO conventions, will be under the ILO supervisions system. “The ILO’s approach towards realizing occupational rights are much centralized towards person-oriented than that of the industry. This in fact imposes a higher degree of scrutiny upon the latter’s competence requiring the realization of its organizational goals to the fullest.”<sup>71</sup> Contrary to the IMO, the ILO has a unique system for the supervision of the application of ILO international labour standards. Once a country has ratified an ILO Convention, it is obliged to report regularly on measures it has taken to implement it. Reports are examined by the ILO Committee of Experts on the Application of Conventions and Recommendations (CEACR) which makes two kinds of comments: observations and direct requests. These observations are published in the Committee’s annual report. Direct requests relate to more technical questions or requests for further information. They are not published in the report but are communicated directly to the governments concerned.<sup>72</sup> Another unique feature of the ILO is that it has a tripartite structure – governments, employers and workers have an equal voice to participate in the rule-making process.

All of the afore-mentioned elements of ILO’s organizational system and those contained in the MLC could facilitate uniformity in the implementation and enforcement of the MLC Standards in the future.

## **1.2. Research question**

The research question is:

Does the new maritime labour regulation – the MLC – offer an effective solution to the problem of the identification of the responsible party in SEA’s and, if so, also, better protection to seafarers compared to previous regulation?

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<sup>70</sup> Pr. K. Mukherjee, M. Brownrigg, *supra* note 2, p. 195.

<sup>71</sup> Gunasekera, D. M., “*Imposing of Responsibility on States’ to Guarantee Labour Standards for Seafarers Under the MLC 2006: Can the ILO Achieve Its Goal?*”, *Frontiers of Legal Research*, Volume 1, Number 1, 2013, p. 34. Available at: <http://www.cscanada.net/index.php/flr/article/view/j.flr.1929663020130101.192> Last visited in March 2020.

<sup>72</sup> See information about CEACR, available at: <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/committee-of-experts-on-the-application-of-conventions-and-recommendations/lang-en/index.htm> Last visited in March 2020.

There is no comprehensive scientific legal research on this subject now. Although there are guidelines and questionnaires developed by international organizations and national administrations on the application of the MLC, none of them addresses explicitly the problem of the identification of the responsible shipowner. The research aims to bring new knowledge to the area of maritime labour law and international labour law and to maritime law generally. The project will be an important contribution for promoting understanding of seafarers' rights and shipowners' responsibilities under the MLC.

### **1.3. Aim and objectives of the research**

The most important issue for a seafarer who wants to receive payments for his work on a ship is the identification of the person who is responsible for the obligations arising out of the SEA. Typically, not only shipowners but also other persons are involved in a ship's operation, including in seafarers' recruitment and placement. A registered shipowner very often is only a mailbox but the real beneficiary and decision-maker in relation to the particular ship is another person. It is very easy, and comparatively cheap, to establish a complex web of corporate entities providing an effective cover to the identities of beneficial owners who do not want to be known.

Consequently, the aim of the dissertation is to address the problem associated with the identification of the shipowner in maritime labour law and research what is the effect of the MLC on this problem.

The objectives of the dissertation are:

#### **1) analysis of international legal acts in the areas of maritime labour law and shipping in respect of the problem of the identification of the responsible shipowner**

Within the scope of the first objective, the following international legal acts in the areas of maritime labour law and shipping should be analysed: the United Nations Convention on the Law of the Sea (UNCLOS), IMO conventions, ILO conventions, the 1986 United Nations Convention on Conditions for Registration of Ships (UNCCRO's), the Vienna Convention on Consular Relations, 1963, as well as the EU acquis. UNCLOS as a framework convention for the law of the sea addresses the state's responsibility in respect of seafarers employed on its ships, in general terms. IMO conventions, aimed to ensure maritime safety and navigation, also address some aspects covered by maritime labour law. In their turn, ILO conventions were the main source of

maritime labour law before the MLC. The purpose of the adoption of the UNCCRO's, among other things, was to establish clear criteria for the identification of the responsible shipowner. Accordingly, this international legal act, although not in force yet, is also addressed in the analysis in line with the first objective. Within our region, Europe, EU law plays an important role in many areas, including in shipping. The EU was an active participant in the MLC adoption process. Accordingly, analysis of the EU *acquis* in respect to MLC implementation within the EU is contained under this objective. The analysis in the scope of this objective should be focussed on the concept of *shipowner* and provisions on the identification of the shipowner in the aforementioned international legal acts in order to discover in what extent this issue is covered by international law outside of the MLC.

## **2) analysis of the legal concept of *shipowner* under the MLC**

Following the analysis of international legal acts in the areas of maritime labour law and shipping, analysis of the MLC in respect of the identification of the responsible shipowner should be given. The concept of *shipowner* is one of the key concepts of the MLC. The shipowner is the main person who has duties and obligations imposed by the MLC. The MLC contains a definition of the term “shipowner”. This definition is drafted in a broad manner and the true meaning of it can be disputable. To examine the concept of *shipowner* under the MLC, analysis not only of the relevant term and definition in the MLC text but, also, the analysis of legislative intention should be done.

## **3) analysis of national law implementing the MLC concept of *shipowner* and requirements in respect of the identification of the responsible shipowner**

Effective functioning of International maritime labour law depends upon the implementation and enforcement of it domestically. Therefore, the implementation of the relevant provisions of the MLC into national law need to be analysed. Analysis of national law will be focussed on several issues relevant to the purpose of the research. First, it will be researched: who can be considered as the shipowner in respect of seafarers’ employment under national law of a particular country and does the national law sufficiently state who is the final responsible person in respect of seafarers’ claims. The next question to be researched is: does the national law ensure that the seafarer has information about this person?

#### **4) analysis of provisions in standard contracts in shipping in respect of the delegation of responsibility for seafarers' employment to third parties**

The most important document in respect of seafarers' employment is the SEA. International law prescribes minimal requirements in respect of content and form of the SEA. In respect of seafarers' labour rights, collective bargaining agreements feature as an important provision, forming part of the SEA. The shipowner's obligations in respect to operation of a ship, including in respect of the recruitment and placement of crew, usually are delegated to professional ship managers – the Management Company on the basis of the management contract. The management contract plays a central role in ship operation. The shipowner's responsibility in respect of the seafarers' employment can be delegated also to other persons, such as the bareboat charterers, agents and other third parties. Delegation of the shipowner's responsibility to other persons and authorization of the third parties to act on behalf of the real shipowner through the agents, trust companies and other intermediaries is a serious obstacle for the identification of the person with final responsibility. Very often, the SEA is signed by intermediaries acting on behalf of the shipowner. Therefore, the analysis of the relevant provisions of the afore-mentioned standard contracts in shipping should be done.

#### **5) comparative analysis of security measures available to seafarers after the introduction of the MLC**

The MLC introduces several instruments for protection of seafarers' rights.

One is the MLC requirement for shipowners to provide financial security to compensate seafarers in cases of abandonment and in the event of the death or long-term disability of a seafarer due to an occupational injury, illness or hazard, as set out in national law, the seafarers' employment agreement or by collective agreement.<sup>73</sup> Since the MLC amendments in 2014, the protection of seafarers financial security has considerably improved. The Standard A2.5.2. *Financial security* inserted in the MLC as result of the 2014 amendments requires that the financial security system assists seafarers in the event of their abandonment by providing direct access, sufficient coverage and expedited financial assistance. The MLC amendments 2014 specifies the form and conditions of the financial security required by the initial version of the MLC. The financial security system may be in the form of a social security scheme or insurance, a national

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<sup>73</sup> Regulation 2.5. – Repatriation, Standard A2.5.2; Standard A4.2, paragraph 1 (b), MLC.

fund or other similar arrangements.<sup>74</sup> The certificate or other documentary evidence of financial security shall contain specific information required by the MLC and a copy of it shall be posted in a conspicuous place on board where it is available to seafarers.<sup>75</sup>

Next, paragraph 5 c) vi) of Standard A1.4. of the MLC requires that the seafarer recruitment and placement services (SRPS) operating in Member States establish a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a SRPS or the relevant shipowner to meet its obligations to them.

The MLC requires that the enforcement of the MLC Standards is covered by the flag State control system and PSC system. Under Regulation 5.1 - *Flag State responsibilities* of the MLC, each Member State shall establish an effective system for the inspection and certification of maritime labour conditions on ships that fly its flag, ensuring that the working and living conditions for seafarers on ships that fly its flag meet, and continue to meet, the standards in the MLC.<sup>76</sup> Every foreign ship calling in the port of a Member State may be the subject of inspection for the purpose of reviewing compliance with the requirements of the MLC (including seafarers' rights) relating to the working and living conditions of seafarers on the ship.<sup>77</sup>

Additionally, with respect to port State and flag State control, the MLC in its Regulation 5.3. *Labour-supplying responsibilities* contains obligations of the Member State in respect of the recruitment and placement of seafarers that are its nationals or are resident or are otherwise domiciled in its territory. The specificity of the protection of seafarers through the SRPS is that seafarers, through the SRPS, in the seafarers' country of residence are often recruited for ships flying the flag of another country where the seafarers' country of residence has no jurisdiction. As well, shipowners of ships that fly a Member State's flag, can use SRPS based in countries or territories in which the MLC does not apply. The MLC requires for shipowners to ensure, as far as practicable, that those services meet the requirements of the MLC.<sup>78</sup>

Besides the measures introduced by the MLC, seafarers can use for protection of their claims an historic measure – a ship arrest. If a shipowner does not fulfil their obligations in respect

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<sup>74</sup> Standard A2.5.2, paragraph 3; Standard A.4.2.2., paragraph 2, MLC.

<sup>75</sup> Standard A2.5.2, paragraphs 6., 7; Standard A4.2.1., paragraphs 11., 14, MLC.

<sup>76</sup> Regulation 5.1.1. – General principles, MLC.

<sup>77</sup> Regulation 5.2.1 – Inspections in port, MLC.

<sup>78</sup> Standard A1.4 – Recruitment and placement, paragraph 9, MLC.

of the seafarers, maritime law provides protection for the seafarers' claims through a ship arrest. A ship arrest is an institute in shipping which is traditionally used for obtaining security and payments for all claims arising from the operation of a ship, including claims of seafarers. Wages and other sums due to the seafarers are recognized as maritime claims in accordance with the International Convention Relating to the Arrest of Sea-Going Ships 1952 (Arrest Convention 1952) and the International Convention on Arrest of Ships 1999 (Arrest Convention 1999) and, accordingly, a ship can be arrested for such claims. Availability of the information about an owner of a ship is crucial for effective enforcement of a ship arrest. If under maritime labour law another person other than the shipowner or bareboat charterer is declared as the shipowner – the person with final responsibility, and the seafarer has no information on a real owner of the ship, it could cause problems establishing the defendant for the purposes of a ship arrest and to arrest a ship as security for seafarers' claims.

## **6) conclusions and recommendations**

Finally, taking into account results obtained in accordance with the above-mentioned objectives, the objective of the research is to make conclusions and present recommendations, if necessary.

### **1.4. Structure of the research and target groups**

The structure of this dissertation is linked with its research question and objectives:

- Chapter 1 is an introduction. State of art, research question, aim and objectives of the research, structure of the research and target groups, methodology and methods, clarification of the scope of research and use of the terms is presented in Chapter 1.
- Chapter 2 contains analysis of the international legal acts in respect of the problem of the identification of the responsible party in SEA's. Relevant international legal acts: UNCLOS, ILO and IMO conventions, UNCCRO's, the Vienna Convention on Consular Relations 1963 are analysed. Next, the concept of *shipowner* under the MLC is presented in this Chapter. Finally, the analysis of EU legislative acts related to implementation of the MLC is given.
- Chapter 3 presents analysis of national law implementing the MLC. Analysis is focused on the questions of who can be considered as the shipowner in respect of seafarers' employment under national law of a particular country, whether or not it is clear who the final responsible person is and whether or not national law ensures that the seafarer has information

about this person. The national law of the following countries is covered in this Chapter: Denmark, Estonia, Finland, Germany, Latvia, Norway, the Philippines, Spain and the UK.

- Chapter 4 is dedicated to analysis of standard contracts in shipping related to the employment of seafarers, including delegation of responsibility for employment of crew to third parties. At first, the SEA as the main seafarer's document evidencing employment relations between the seafarer and shipowner is analysed. Next, the analysis of traditional contracts in shipping, according to which the responsibility over seafarers' employment is delegated by shipowners to other parties, – demise (bareboat) charterparty contracts, ship and crew management contracts and contracts with other intermediaries is presented. Finally, the considerations in respect of collective bargaining agreements, forming part of the SEA, are given.

- Chapter 5 offers analysis of different security measures for seafarers available under private law and public law. Public law instruments introduced by the MLC are the main security measures for seafarers today and they are: financial security for seafarers' abandonment and contractual claims, flag State and port State inspection systems and certification and control of SRPS. Next, an analysis of a ship arrest, a traditional security measure for seafarers' claims under private law, is presented.

- Chapter 6 contains the conclusions and recommendations.

- Chapter 7 contains a list of bibliography.

Chapter 7 is followed by ten Annexes.

Target groups:

- those working in shipping, especially shipowners and seafarers, as well as others – management companies, classification societies, SRPS, manning agents, P&I Clubs and other providers of financial security required by the MLC, etc.;

- organizations representing shipowners and seafarers;

- legislators;

- government institutions responsible for the implementation and enforcement of the MLC;

- national authorities responsible for flag State control and PSC.

## 1.5. Methodology and methods

The main research methodology is comparative legal doctrinal analysis: the comparative analysis of international and national legislative acts, preparatory works, case law, model contract forms, reports, books and articles.

Interpretation in international law has traditionally been understood as a process of assigning meaning to texts with the objective of establishing rights and obligations.<sup>79</sup> Across the divergent conceptions of interpretation, one commonality is manifest: the notion that interpretation is concerned with discerning or clarifying meaning.<sup>80</sup> When trying to identify and ascertain the meaning of a particular word with both ordinary and legal meanings or a word with several legal meanings, one can make use of the context in which the word occurs. This includes both the wider legal context, such as a particular area of law, and the immediate linguistic context such as the sentence, the paragraph and the entire text in which the word is used.<sup>81</sup>

Interpretation is an act of violence against a text. We disrespect the text for not saying what it means, not meaning what it says, concealing obscurity in delusive clarity.<sup>82</sup> Legal interpretation is a special case of interpretation in general. Interpretation in International Law is a special case of legal interpretation, with differences arising from: (a) the inter-lingual character of international law, especially in treaty texts that are equally authentic in several languages; (b) the extreme diversity of the cultural backgrounds, especially in legal culture, of those participating in drafting and interpreting processes; and (c) the primitive crudity of intergovernmental relations, in general.<sup>83</sup>

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<sup>79</sup> D. Peat, M. Windsor, “*Book Symposium: Interpretation in International Law—What’s In A Game?*”, *Opinio Juris*, 6 April 2015. Available at: <http://opiniojuris.org/2015/04/06/book-symposium-interpretation-in-international-law-whats-in-a-game/> Last visited in March 2020.

<sup>80</sup> D. Peat, M. Windsor, “*Playing the Game of Interpretation: On Meaning and Metaphor in International Law*” in A. Bianchi, D. Peat, M. Windsor (eds), *Interpretation in International Law*, London, Oxford University Press, 2015, p. 9.

<sup>81</sup> D. Cao, *Translating Law*, Great Britain, Multilingual Matters, 2007, p. 70. Available at: <https://epdf.pub/translating-law.html> or [https://books.google.lv/books?id=iXRingEACAAJ&printsec=frontcover&hl=lv&source=gbs\\_ge\\_summary\\_r&cad=0#v=onepage&q&f=false](https://books.google.lv/books?id=iXRingEACAAJ&printsec=frontcover&hl=lv&source=gbs_ge_summary_r&cad=0#v=onepage&q&f=false) Last visited in March 2020.

<sup>82</sup> Ph. Allot, “*Interpretation – An Exact Art*”, in A. Bianchi, D. Peat, M. Windsor, (eds.), *Interpretation in International Law*, London, Oxford University Press, 2015, p. 373.

<sup>83</sup> Ph. Allot, *ibid*, p. 376.

The interpretation rules of international law are mostly those contained in the Vienna Convention on the Law of Treaties 1969<sup>84</sup> (VCLT). The general rule of interpretation in accordance with Article 31 of the VCLT provides that a treaty shall be interpreted “*in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose*”. Article 31 of the VCLT puts the terms, the context, and the object and purpose of the treaty on an equal footing. Such an understanding of Article 31 has received authoritative support from the ILC, itself.<sup>85</sup>

Article 31 (2) of the VCLT contains additional obligatory elements of the general rule:

*2. The context for the purpose of the interpretation of a treaty shall comprise, in addition to the text, including its preamble and annexes:*

*(a) any agreement relating to the treaty which was made between all the parties in connexion with the conclusion of the treaty; (b) any instrument which was made by one or more parties in connexion with the conclusion of the treaty and accepted by the other parties as an instrument related to the treaty.*

Article 31 (3) of the VCLT lists additional elements to be taken into account, together with the context:

*(a) any subsequent agreement between the parties regarding the interpretation of the treaty or the application of its provisions; (b) any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation; (c) any relevant rules of international law applicable in the relations between the parties.*

Finally, Article 31 (4) of the VCLT recognises that parties to a treaty may have given certain terms “a special meaning” if it is established that the parties so intended.

The supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, can be used when the interpretation according to Article 31 of the VCLT leaves the meaning ambiguous or obscure or leads to a result which is manifestly absurd or unreasonable.<sup>86</sup>

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<sup>84</sup> Vienna Convention on the Law of Treaties, 1969. Available on: <https://treaties.un.org/doc/Publication/UNTS/Volume%201155/volume-1155-I-18232-English.pdf> Last visited in March 2020.

<sup>85</sup> F. Zarbiyev, “*A Genealogy of Textualism in Treaty Interpretation*”, in A. Bianchi, D. Piet, M. Windsor, (eds.), *Interpretation in International Law*, London, Oxford University Press, 2015, p. 255.

<sup>86</sup> Article 32, VCLT.

The principle that an international instrument must be interpreted in accordance with the intention of the parties has been upheld by the International Court of Justice.<sup>87</sup> The legislative intention plays a major role in interpreting international conventions and national legal regulation of which cannot be said about interpretation of standard contractual provisions and court cases.

The following methods of interpretation of legal norms will be used in order to achieve the research objectives stated above:

- 1) literal (philological) method – interpretation by establishing a philological meaning of words in a legal norm;
- 2) systemic or contextual method – interpretation by establishing the meaning of a legal norm by examining the interconnections between different legal norms;
- 3) historical and/or comparative interpretation (reference to *travaux préparatoires*) – interpretation by establishing the meaning of a legal norm by taking into consideration circumstances which were the basis for adopting this legal norm;
- 4) teleological or dynamic method – interpretation by establishing the meaning of a legal norm by examining the aim of this legal norm.

Law consists of texts. Interpreting texts involves finding out what they mean. **The literal interpretation** is therefore the starting point of any interpretation. The literal method will be used in the collection of relevant information for the purposes of the research. It should be mentioned that in respect of interpretation of the national law the author mostly will work with the English translations of the legal texts from its original language.

Systematic, historical and teleological methods will be used in analysis of the collected information. In establishing true meaning of legal norms all methods should be applied.

Since the law has developed systematically by codification, consolidation or similar comprehensive approaches to law-making, it is necessary to interpret rules within their systematic context. Interpretation should avoid contradictions. **The systematic method** will be relevant in establishing the meaning of a particular legal norm in connection to other legal norms. Thus, a legal provision placed in a certain systematic context, such as a shipping code, needs to be interpreted uniformly within this context, unless otherwise required. The research will contain comparative analysis of different areas of law, such as maritime labour law, company law, contract law, private law and public law. The project will offer a comparative analysis of issues germane

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<sup>87</sup> E. Bjorge, “*The Vienna Rules, Evolutionary Interpretation, and the Intentions of the parties*”, in A. Bianchi, D. Piet, M. Windsor, (eds.), *Interpretation in International Law*, London, Oxford University Press, 2015, p. 190.

to shipping and maritime labour law. The comparative analysis will be used to present differences and similarities in respect of the responsibility of shipowners before the MLC and after the new regulation came into force and in respect of implementation of international regulation in national law of different countries.

It should be considered that the requirement of systematic interpretation makes little sense in legal systems that do not rely on codification. This applies especially in common law and, to some extent, also in Scandinavian countries. Judge-made law, developed through the *stare decisis* doctrine cannot aim to be systematic, since there is no theoretical reference point to which interpretation could turn. Legislation will usually define for itself the terminology used which may be completely different in a neighbouring field.

**The historical method** will be used to review development of international and national regulation:

- a shipowner's responsibility under the legal norms of international conventions;
- a shipowner's responsibility under the MLC, the MLC drafting process, the discussions and opinions expressed in the MLC drafting process;
- relevant national regulation, discussions, and observations in respect of national implementation of the MLC Standards.

The interpretation of the rules of national law will usually refer to their origin, either historical or in comparative law. This may be rooted in publicly accessible documents, for example, those issued by national or regional governments, or by parliament, or both. However, the legal traditions of States differ with regard to the importance of *travaux préparatoires*.

The legal meaning of a legal term in its textual context does not always appear plain. When a word and concept with an established core of meaning goes beyond its ordinary use the result is ambiguity and inconsistency.<sup>88</sup> Therefore, the **teleological method** will be used in examining the aim of this legal norm. Additionally, the aim of legal regulation can be revealed as a result of using the historical method.

From a legal-linguistics perspective, the main method will be to describe the use and function of the concept of *shipowner* in its designated terms in international and national maritime labour law, and to establish a degree of equivalence of national concepts. Conceptual and linguistic analysis of the term "shipowner" will be carried out using definitions contained in international and national law, standard contracts, academic and judicial writings, and by analysing *travaux*

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<sup>88</sup> G. Tessuto, "Legal concepts and terminography: Analysis and application", in V. K. Bhatia, Ch. C. Candlin, P. E. Allori, (eds.), *Language, Culture and the Law: The Formulation of Legal Concepts Across Systems and Cultures*, New York, Peter Lang, 2008, p. 286.

*préparatoires*, provisions of international and national law and standard contracts, official information and explanations on the implementation of the MLC in order to establish legislative intention. The descriptive concept-centred method is widely established in scholarly literature on terminology, and is an important feature on which terminology is based.<sup>89</sup>

## **1.6. Clarification of the scope of research and use of the terms**

### **Clarification of the scope of research**

Maritime law, including principles of maritime labour law, is ancient. The scope of the thesis is limited to the legal state existing exactly before the MLC came into force and, accordingly, which was changed by the MLC.

The research covers “classic seafarers”, and does not address specific problems associated with employment in specific sectors in shipping. The employees on cruise ships and passenger ships, employed in a capacity other than that related to navigation, such as guest entertainers, etc., form a big group of persons employed on ships which are regarded as seafarers according to the MLC. The practice and contractual arrangements of employment of this category of employees is different compared to that of traditional seafarers. The same can be said about the employees of the offshore industry representing a considerable group of persons employed on ships. Offshore employment is associated with high risk and the current maritime labour regulation is not ready to fully address legal implications in respect of offshore employment. Therefore, the application of the MLC to the offshore sector was reconsidered during the MLC preparatory work but it was left to determine for the Member States whether the employees of the offshore industry are considered seafarers under the MLC.

The thesis covers master’s employment so far as it does not touch upon distinctive features of master’s status and employment on board which is out of the scope of the thesis. A ship master has a special role. For the longest time, the ship master was responsible for recruiting the crew. The ship master was also the shipowner’s proxy and as the master also held a commercial role, he has a special position.<sup>90</sup> The master is the representative of the shipowner on a ship, as well as one of the employees. Also, nowadays, the master has various duties and obligations which make his

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<sup>89</sup> G. Tessuto, *ibid*, p. 287.

<sup>90</sup> Fr. Mandin, “*The Ship Master and the Maritime Labour Convention*”. Seafarers: an international labour market in perspective, Editorial Gomylex, pp. 217-238, 2016, 978-84-15176-67-1. Available at: <https://hal.archives-ouvertes.fr/hal-01470354/document> Last visited in March 2020.

status different from other seafarers. The master is responsible for securing the safety of all on board, as well as of the ship, itself. The heavy responsibility is accompanied by great powers confided to the master.

“In many countries ships’ masters, and often engineers, are not considered ‘seafarers’ for purpose of the application of hours of work or rest. During the negotiation to develop the MLC many governments did not agree that the master should be covered by hours of work or rest provisions.”<sup>91</sup> “The Convention changes the legal climate for the master. For the master, the MLC is a substantive step to consolidation the primacy and protection of the master in command and to bring about owners’ cooperation with him in best command practices, often with the force of flag State law”.<sup>92</sup> According to Mandin:

*The ship master is a seafarer and unless he is self-employed, is employed by the shipowner or ship operator. They are independent from his duties of ship master, even if they are activated upon signing a maritime employment contract. Firstly, the ship master has nautical skills. He is the leader of a maritime expedition. He is the master of the vessel and thus ensures the nautical operation of the vessel and is responsible for the safety of the expedition. Secondly, the ship master has commercial skills. He is the shipowner’s proxy. The ship master must see to the normal vessel operation. The ship master also represents the shipowner’s commercial interests. Lastly, the ship master has public authority responsibilities. A vessel is an asset tied to a nationality and where a crew is recognized as a community of individuals. This means the ship master can act as a representative of the State and perform duties of a civil, public and ministry official. The ship master can also take on a judicial role. These responsibilities place the ship master at a crossroads of several rights, particularly those associated to shipowners and states and also contemplated by the convention.*<sup>93</sup>

### **Use of the terms**

In the thesis, the term “shipowner” is used as a general term. The term “shipowner” in this sense may thus be an actual owner of a ship, a person having disposal of a ship by means of leasing or another organization or person who has agreed to take over duties and responsibilities in respect of seafarers’ recruitment and employment imposed on shipowners, in accordance to the law.

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<sup>91</sup> M. L. McConnel, D. Devlin, Cl. Doumbia-Henry, *The Maritime Labour Convention*, A Legal Primer to an Emerging International Regime, Biggleswade (United Kingdom), Brill, 2011, p. 308.

<sup>92</sup> J. A. C. Cartner, “*The Ship master and the Maritime Labour Convention 2006*”, in J. Lavelle, (ed.), *The Maritime Labour Convention 2006 – International Labour Law Redefined*, London, Informa Law from Routledge, 2014, pp. 47-68.

<sup>93</sup> Fr. Mandin, *supra* note 90, p. 19.

To specifically indicate actual ownership the terms “owner of the ship” or just “owner” is used.

The term “the Maritime Labour Convention” or abbreviation “MLC” is used to refer to the convention as a whole, as amended. If there is a purpose to refer to the original versions of the MLC or specific amendments, it is clearly indicated in the text.

## II Shipowner – the responsible party in SEA’s under international law and the MLC

The development of international maritime labour law cannot take place in isolation from existing structures of international law since maritime labour law is part of the general discipline of international law. Therefore, analysis of the responsible party – the shipowner under the MLC - requires understanding of the wider legal environment, including UNCLOS and other international conventions regulating shipping and maritime labour.

UNCLOS, called also “a Constitution for the Oceans,”<sup>94</sup> among its ultimate aims has to contribute to the maintenance of peace, justice and progress for all people of the world and to settle all issues relating to the law of the seas,<sup>95</sup> including a state’s jurisdiction and control in administrative, technical and social matters over ships flying its flag.<sup>96</sup> The MLC was adopted recalling that UNCLOS sets out a general legal framework within which all activities in the oceans and seas must be carried out. The MLC was adopted recalling that the UNCLOS sets out a general legal framework within which all activities in the oceans and seas must be carried out and is of strategic importance as the basis for national, regional and global action and cooperation in the marine sector, and that its integrity needs to be maintained, as well recalling Article 94 of the UNCLOS, which establishes the duties and obligations of a flag State with regard to, inter alia, labour conditions, crewing and social matters on ships that fly its flag.<sup>97</sup>

The IMO, as the competent organization in the field of shipping, has had a significant impact on the law of the seas, both prior to and since the entry into force of UNCLOS.<sup>98</sup> IMO’s official position is that it has universal mandate in accordance with international law in connection with the adoption of international shipping rules and standards in matters concerning maritime safety, efficiency of navigation and the prevention and control of marine pollution from vessels

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<sup>94</sup> See the statement of Tommy T.B. Koh, of Singapore, President of the Third United Nations Conference on the Law of the Sea. Available at: [http://www.un.org/Depts/los/convention\\_agreements/texts/koh\\_english.pdf](http://www.un.org/Depts/los/convention_agreements/texts/koh_english.pdf) Last visited in March 2020.

<sup>95</sup> Preamble of UNCLOS. Full text of UNCLOS is available at: [http://www.un.org/Depts/los/convention\\_agreements/texts/unclos/unclos\\_e.pdf](http://www.un.org/Depts/los/convention_agreements/texts/unclos/unclos_e.pdf) Last visited in March 2020.

<sup>96</sup> Article 94, UNCLOS.

<sup>97</sup> Preamble, MLC.

<sup>98</sup> R. Barnes, D. Freestone, D. M. Ong, “*The Law of Sea: Progress and prospects*”, in R. Barnes, D. Freestone, D. M. Ong, (eds.), *The Law of Sea: Progress and prospects*, Oxford, Oxford University Press, 2006, p. 9.

and by dumping.<sup>99</sup> And “[w]hile UNCLOS defines flag, coastal and port State jurisdiction, IMO instruments specify how State jurisdiction should be exercised so as to ensure compliance with safety and shipping anti-pollution regulations. The enforcement of these regulations is primarily the responsibility of the flag State.”<sup>100</sup>

The seafaring market has undergone many changes due to technological evolution and economic globalization during the 20th century. In turn, because of the transformation of maritime business into internationalized activities, national and regional legal systems of PSC were established in order to provide a general framework for the development of maritime activity.<sup>101</sup> However, the main objective of international regulations was to seek solutions to the detection of substandard vessels in order to prevent any risk of pollution and to ensure safety on board. Labour issues were not the primary target of regulation and the established PSC system.<sup>102</sup> With the MLC, a human factor was recognised as important for ship safety as technical standards and finally, also, labour issues became a subject of PSC.

It could be said that since the MLC the importance of seafarers’ well-being has been raised at least up to the same level as other factors important for safety in shipping. According to Zhang, as the MLC has entered into force, the standard of seaworthiness with which a ship must comply is now to be tested against the requirements of the convention in combination with other requirements. If a ship owner fails to observe the requirements in the MLC, although it has complied with other requirements, it would still be difficult for the owner to prove that he has exercised due diligence to make the ship seaworthy.<sup>103</sup> If the shipowner failed to make a ship seaworthy he will not be able to get exemption from liability for different maritime claims.<sup>104</sup>

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<sup>99</sup> Implications of the entry into force of the United Nations Convention on the Law of the Sea for the International Maritime Organization, LEG/MISC.8 30 March 2014, p. 7-8. Available at: <http://www.imo.org/en/OurWork/Legal/Documents/LEG%20MISC%208.pdf> Last visited in March 2020.

<sup>100</sup> *Ibid*, p. 8.

<sup>101</sup> C. Bagoulla, P. Guillotreau, *supra* note 34, p. 18.

<sup>102</sup> H. L. McLaughlin, (2012), “*Seafarers and seafaring*”, in “*The Blackwell Companion to Maritime Economics*”, First Edition. Edited by Wayne K. Talley. p. 321–332, cited in C. Bagoulla, P. Guillotreau, *supra* note 34, p. 18.

<sup>103</sup> P. Zhang, Edw. Phillips, *supra* note 1, p. 57.

<sup>104</sup> See, for example, Paragraph 1 of Article IV of The Hague-Visby Rules (International Convention for the Unification of Certain Rules of Law relating to Bills of Lading, as amended by the Brussels Protocol 1968. Available at: <https://www.jus.uio.no/lm/sea.carriage.hague.visby.rules.1968/doc.html> Last visited in March 2020.):

*1. Neither the carrier nor the ship shall be liable for loss or damage arising or resulting from unseaworthiness unless caused by want of due diligence on the part of the carrier to make the ship seaworthy, and to secure that the ship is properly manned, equipped and supplied, and to make the holds, refrigerating and cool chambers and all other parts of the ship in which goods are carried fit and safe for their reception, carriage and preservation in accordance with the provisions of paragraph 1 of Article III. Whenever loss or damage has resulted from unseaworthiness the burden of proving the exercise of due diligence shall be on the carrier or other person claiming exemption under this article.*

Before the MLC seafarers, had been specifically protected by numerous ILO conventions, many of them superseded by the MLC.<sup>105</sup> Standards of these ILO conventions mostly without changes are transferred also to the MLC. However, an important difference to note in respect of the implementation and enforcement of these standards is that the MLC contains detailed requirements for the flag State, port State and labour-supplying State in respect of the implementation and enforcement of these standards.<sup>106</sup>

The MLC can be seen as a progressive development of the Law of the Sea regime as well as of international law generally. Accordingly, there are well-grounded reasons for an overall expectation in respect of the MLC as the instrument which increases respect towards seafarers' rights in a much higher level.

Considering the above-mentioned, this chapter is devoted to the analysis of international law applicable to maritime labour, i.e., the international law containing prescription of rights attributed to persons employed on board a ship, the duties imposed on States in order to safeguard these rights, as well as requirements in respect of the identification of the responsible person. The chapter aims to consider provisions of UNCLOS, IMO conventions, ILO conventions, UNCCRO's, and the Vienna Convention on Consular Relations, 1963, focussing on provisions defining a responsible person and provisions requiring to ensure the identification of the responsible person. The definitions of "shipowner" contained in international maritime conventions were reconsidered during the MLC drafting process.<sup>107</sup> Next, the chapter aims to describe the relations between the legal term "shipowner" and the concept of *shipowner* in the MLC. Finally, the contribution of EU legislation in respect of the research questions is presented.

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<sup>105</sup> See Article 10, MLC.

<sup>106</sup> Title 5 Compliance and enforcement, MLC.

<sup>107</sup> High-level Tripartite Working Group on Maritime Labour Standards (Second meeting), 14-18 October, 2002. TWGMLS/2002/4: Definitions and scope of application provisions in existing ILO maritime instruments and related texts, *supra* note 5.

## 2.1. UNCLOS

UNCLOS was adopted by the Third Conference on the Law of the Sea on 30 April 1982 and entered into force on 16 November 1994. As of 10 January 2020, UNCLOS has 168 parties (167 States and EU).<sup>108</sup>

UNCLOS is a framework convention and many of its provisions can be implemented only through specific operative regulations in other international agreements.<sup>109</sup> The MLC is one of such international agreements. UNCLOS does not directly address the responsibility of shipowners towards the working and living conditions of the seafarers employed on their ships. UNCLOS is designed for States, not for individuals. The Law of the Sea Convention is a State-centred regime in which States have rights (and obligations) while people may, at most, be considered as beneficiaries.<sup>110</sup> Little attention is devoted by UNCLOS to seafarers' working and living conditions and social rights, which can be considered a gap in the Convention.<sup>111</sup>

What UNCLOS does in respect of maritime labour is that it establishes the duty of the flag State to exercise effective jurisdiction and control over ships flying its flag. Seafarers' social rights and labour rights are addressed in UNCLOS by establishing the flag State's responsibility over labour conditions on ships. Article 91, paragraph 1 of UNCLOS states:

*1. Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.*

The responsibility over a particular ship has a State having a *genuine link* with the ship. UNCLOS itself does not give explanation to the notion of a *genuine link*. It has been discussed before at many international conferences and it seems there is still no common agreement on the

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<sup>108</sup> List of parties to the UNCLOS is available at: [https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXI-6&chapter=21&Temp=mtdsg3&clang=\\_en](https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en) Last visited in March 2020.

<sup>109</sup> G. Librando, "The International Maritime Organization and the Law of the Sea", in the *IMLI manual on international maritime law*, Volume I: The Law of the Sea, Oxford, Oxford University press, 2014, p. 580.

<sup>110</sup> I. Papanicolopulu, "The Law of the Sea Convention: No Place for Persons?", (2012) 27 Int'l J Marine and Coastal L 867, cited in I. Papanicolopulu, "Human rights and the law of the sea", in the *IMLI manual on international maritime law*, Volume I: The Law of the Sea, Oxford, Oxford University press, 2014, p. 510.

<sup>111</sup> M. L. McConnell, "The ILO's Maritime Labour Convention, 2006: Filling a Gap in the Law of the Sea", *Mepielan e-Bulletin*, 7 April 2011. Available at: <http://www.mepielan-ebulletin.gr/default.aspx?pid=18&CategoryId=2&ArticleId=55&Article=The-ILO%E2%80%99s-Maritime-Labour-Convention,-2006-Filling-a-Gap-in-the-Law-of-the-Sea> Last visited in March 2020.

actual definition of “*genuine link*”.<sup>112</sup> It is beyond the scope of this thesis to give a full examination to all debates and considerations about the true meaning of this concept. However, it should be mentioned that a *genuine link* exists if there is a competent maritime administration exercising effective control over ships registered in its ship register as was stated by the International Tribunal on the Law of the Sea (ITLOS) in the *M/V Virginia G* case (Panama/Guinea-Bissau).<sup>113</sup>

*113. In the view of the Tribunal, once a ship is registered, the flag State is required, under article 94 of the Convention, to exercise effective jurisdiction and control over that ship in order to ensure that it operates in accordance with generally accepted international regulations, procedures and practices. This is the meaning of "genuine link".*

*Genuine link* means that a State is responsible for its ships, for their compliance with the international standards accepted by the flag State under international conventions. Every ship after registration becomes part of the state for legal purposes and, as well as its owner, becomes subject to the laws of that state. The flag State has primary legal responsibility for the ship in terms of regulating safety, labour laws and on commercial matters.<sup>114</sup> Article 94 of UNCLOS establishes the main principles of the flag State’s responsibility towards seafarers’ labour rights and duty to exercise effective control:

1. *Every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.*
2. *In particular every State shall:*
  - (a) *maintain a register of ships (...); and*
  - (b) *assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.*
3. *Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard, inter alia, to:*
  - (...) (b) *the manning of ships, labour conditions and the training of crews, taking into account the applicable international instruments;*
- (...) 4. *Such measures shall include those necessary to ensure:*

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<sup>112</sup> Ph. Boisson, *Safety at sea. Policies, regulations & international law*, Paris, Berau Veritas, 1999, p. 384; Z. O. Ozcayir, *supra* note 33, p.12-20; R. R. Churchill, A. V. Lowe, *The law of the sea*, Manchester, Manchester University Press, 1999, p. 258-262.

<sup>113</sup> *M/V Virginia G* (Panama/Guinea- Bissau), Judgment 14 April 2014. Available at: <[https://www.itlos.org/fileadmin/itlos/documents/cases/case\\_no.19/judgment/C19-Judgment\\_14.04.14\\_corr2.pdf](https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.19/judgment/C19-Judgment_14.04.14_corr2.pdf)>. Last visited in March 2020.

<sup>114</sup> M. Stopford, *supra* note 22, p. 431.

*(a) that each ship, before registration and thereafter at appropriate intervals, is surveyed by a qualified surveyor of ships, and has on board such charts, nautical publications and navigational equipment and instruments as are appropriate for the safe navigation of the ship;*

*(...) 6. A State which has clear grounds to believe that proper jurisdiction and control with respect to a ship have not been exercised may report the facts to the flag State. Upon receiving such a report, the flag State shall investigate the matter and, if appropriate, take any action necessary to remedy the situation.*

The MLC was adopted recalling that Article 94 of UNCLOS establishes the duties and obligations of a flag State regarding, inter alia, labour conditions, crewing and social matters on ships that fly its flag.<sup>115</sup>

Recalling Article 94 of UNCLOS, on 29 November 2001, the IMO and ILO adopted Guidelines on Provision of Financial Security in Case of Abandonment of Seafarers which are contained in the IMO Resolution A.930(22) adopted on 17 December 2001,<sup>116</sup> which were taken into account in drafting provisions on financial security for repatriation in the MLC amendments 2014.

UNCLOS contains also the principles of PSC. Article 2 (1) of UNCLOS states that:

*The sovereignty of a coastal State extends, beyond its land territory and internal waters and, in the case of an archipelagic State, its archipelagic waters, to an adjacent belt of sea, described as the territorial sea.*

Additionally, other UNCLOS articles regulating rights of coastal States in respect of exclusive economic zone (EEZ), innocent passage, criminal and civil jurisdiction on board a foreign ship, etc., unanimously recognise that by entering foreign ports and other internal waters, foreign merchant ships are subject to the jurisdiction of the coastal State.<sup>117</sup> UNCLOS does not address directly PSC's concern of social and labour conditions on board. PSC powers, having limited regulation under UNCLOS, are extended by international conventions on safety at sea and in respect of labour conditions – by the MLC since its adoption.

It could be concluded that if there was a gap in respect of seafarers' working and living conditions in UNCLOS, then, by adoption of the MLC this gap within a general legal framework of oceans governance is eliminated.

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<sup>115</sup> Preamble, MLC.

<sup>116</sup> *Guidelines on provision of financial security in case of abandonment of seafarers*, adopted in 29 November 2001, IMO Resolution A.930(22). Available at: [https://www.mlc-2006.eu/website/user\\_content/documents/Downloads/Resolution%20A.930\(22\).pdf](https://www.mlc-2006.eu/website/user_content/documents/Downloads/Resolution%20A.930(22).pdf) Last visited in March 2020.

<sup>117</sup> R. R. Churchill, A. V. Lowe, *supra* note 112, p. 65.

## 2.2. IMO legal instruments

The IMO, a specialized agency of the United Nations, is the global standard-setting authority for the safety, security and environmental performance of international shipping. Its main role is to create a regulatory framework for the shipping industry that is fair and effective, universally adopted and universally implemented.<sup>118</sup> The IMO currently has 174 Member States and three Associate Member States.<sup>119</sup> The organization has a predominant role to play in the unification of international maritime law which is evident from the number of conventions developed by the IMO as well as from the number of State parties to the IMO's major regulatory conventions (SOLAS, MARPOL, LOADLINE and COLREG), as well as other conventions.<sup>120</sup>

IMO's measures cover all aspects of international commercial shipping – including ship design, construction, equipment, manning, operation and disposal – to ensure that this vital sector remains safe, environmentally sound, energy efficient and secure.<sup>121</sup> IMO conventions and other instruments<sup>122</sup> cover a shipowner's responsibility for ship safety, technical standards of the ship, safe crew manning, certification of seafarers and civil liability for different maritime claims caused by the activity of a ship. Seafarers' well-being and the shipowner's responsibility for labour relations is not the direct focus of the IMO conventions; however, all afore-mentioned, so called, technical issues affect the living and working conditions on board. Additionally, as afore-mentioned, seafarers' well-being and satisfaction with their labour conditions directly affect the safety of a ship. Since the 1980s, the IMO has increasingly addressed the people involved in shipping in its work.<sup>123</sup> Two fatal accidents, of the *Herald of Free Enterprise* and the *Scandinavian Star*, accelerated the adoption of standards for ship safety management.<sup>124</sup>

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<sup>118</sup> See [www.imo.org](http://www.imo.org)

<sup>119</sup> See <http://www.imo.org/en/About/Membership/Pages/Default.aspx> Last visited in March 2020.

<sup>120</sup> List of IMO conventions available at: <http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/Default.aspx> Last visited in March 2020.

<sup>121</sup> See <http://www.imo.org/en/About/Pages/Default.aspx> Last visited in March 2020.

<sup>122</sup> As a legislative body, IMO uses different instruments: maritime conventions, protocols to an existing conventions, codes (usually are not binding and provide only guidance unless they are become mandatory by introducing appropriate references to the codes in a convention) and resolutions, intended to supplement the conventions or assist governments in their implementation or interpretation and are not binding unless are made binding by conventions or incorporated into national law. See also: Z. O. Ozcayir, *supra* note 33, p. 51.

<sup>123</sup> See <http://www.imo.org/en/OurWork/HumanElement/Pages/Default.aspx> Last visited in March 2020.

<sup>124</sup> Ph. Boisson, *supra* note 112, p. 295.

The IMO has also collaborated with other United Nations institutions in development of other shipping conventions; for example, the revision of the Arrest Convention 1952 resulting in the Arrest Convention 1999 was done by UNCTAD in collaboration with the IMO. The IMO has collaborated with the ILO in preparing and drafting many legal instruments in relation to maritime labour issues, including the MLC.

To enhance global maritime safety and protection of the marine environment and assist States in the implementation of IMO instruments, IMO Resolution A.1070(28) *IMO Instruments Implementation Code (III Code)*<sup>125</sup> was adopted in 2013. It revoked previous IMO Resolution A.1054(27) *Code for the Implementation of Mandatory IMO Instruments*, regulating issues on implementation of IMO instruments. The obligations of flag States, coastal States and port States are addressed separately by the III Code. Paragraph 6 of IMO Resolution A.1054(27) defines the scope of the III Code:

*The Code seeks to address those aspects necessary for a Contracting Government or Party to give full and complete effect to the provisions of the applicable international instruments to which it is a Contracting Government or Party, pertaining to:*

- .1 safety of life at sea;*
- .2 prevention of pollution from ships;*
- .3 standards of training, certification and watchkeeping for seafarers;*
- .4 load lines;*
- .5 tonnage measurement of ships; and*
- .6 regulations for preventing collisions at sea.*

Maritime labour conditions are not under the scope of the III Code. It is worth considering whether or not a responsible shipowner is defined under IMO conventions and how his liability is regulated by IMO conventions.

### ***2.2.1. SOLAS, 1974, and ISM Code***

SOLAS, 1974, came into force on 25 May 1980. In its successive forms, the Convention is generally regarded as the most important of all international treaties concerning the safety of merchant ships. The first version was adopted in 1914, in response to the Titanic disaster, the

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<sup>125</sup> IMO instruments implementation code (III Code), adopted 4 December 2013, IMO Resolution A.1070(28). Available at: [http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Assembly/Documents/A.1070\(28\).pdf](http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Assembly/Documents/A.1070(28).pdf) Last visited in March 2020.

second in 1929, the third in 1948 and the fourth in 1960. The 1974 version includes the tacit acceptance procedure - which provides that an amendment shall enter into force on a specified date unless, before that date, objections to the amendment are received from an agreed number of Parties. The main objective of SOLAS, 1974, is to specify minimum standards for the construction, equipment, and operation of ships, compatible with their safety.<sup>126</sup>

On 4 November 1993, the IMO Assembly adopted Resolution A.741, containing *The International Management Code for the Safe Operation of Ships and for Pollution Prevention*, known as the International Safety Management (ISM) Code.<sup>127</sup> The ISM Code is the result of long efforts to introduce consideration of the human factor into maritime safety regulations.<sup>128</sup> On 1 July 1998 this Code became mandatory for most ships sailing on international voyages with the adoption in May 1994 of Chapter IX “Management for the Safe Operation of Ships” of SOLAS, 1974. This Chapter makes mandatory the ISM Code, which requires a safety management system to be established by the shipowner or any person who has assumed responsibility for the ship (the “Company”).

The IMO Assembly has also adopted the Guidelines on the implementation of the ISM Code which have been revised several times.<sup>129</sup>

The ISM Code does address maritime labour issues only in respect of proper qualification, certification, medical fitness, and training.<sup>130</sup> The ISM Code requires a safety management system to be established by the Company, which is defined as:

*Company means the owner of the ship or any other organization or person, such as the manager, or the bareboat charterer, who has assumed responsibility for operation of the ship from the owner of the ship and*

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<sup>126</sup> See information available at: [http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-\(SOLAS\)-1974.aspx](http://www.imo.org/en/About/Conventions/ListOfConventions/Pages/International-Convention-for-the-Safety-of-Life-at-Sea-(SOLAS)-1974.aspx) Last visited in March 2020.

<sup>127</sup> *The International Management Code for the Safe Operation of Ships and for Pollution Prevention*, adopted by the International Maritime organization by Assembly Resolution A.741(18) of 4 November 1993, as amended by MSC.104(73), MSC.179(79), MSC.195(80), MSC.273(85) and MSC.353(92).

<sup>128</sup> Ph. Boisson, *supra* note 112, p. 295.

<sup>129</sup> According to IMO: *The Guidelines on implementation of the International Safety Management (ISM) Code by Administrations, resolution A.788(19) were replaced with revised Guidelines, which were adopted by resolution A.913(22) in November 2001 which revoked resolution A.788(19). Further revision of these guidelines resulted in Guidelines on implementation of the International Safety Management (ISM) Code by Administrations adopted by resolution A.1022(26) in December 2009. This resolution revokes resolution A.913(22) with effect from 1 July 2010. Revised guidelines on the implementation of the International Safety Management (ISM) Code by Administrations were adopted by resolution A.1071(28) in December 2013. This resolution revokes resolution A.1022(26) with effect from 1 July 2014. More information at <http://www.imo.org/en/ourwork/humanelement/safetymanagement/pages/ismcode.aspx> Last visited in March 2020.*

<sup>130</sup> Paragraph 6 *Resources and personnel*, ISM Code, *supra* note 127.

*who on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code.*<sup>131</sup>

“Safety management system” means a structured and documented system enabling Company personnel to implement effectively the Company safety and environmental protection policy.<sup>132</sup> Flag States should have implemented the requirements of the ISM Code and established procedures for the issue and withdrawal of its ships’ Safety Management Certificates and companies’ Documents of Compliance.

Paragraph 3 *Company responsibilities and authority* of the ISM Code addresses the situation when a person other than the owner is responsible for the operation of the ship:

*3.1 If the entity who is responsible for the operation of the ship is other than the owner, the owner must report the full name and details of such entity to the Administration.*

*3.2 The Company should define and document the responsibility, authority and interrelation of all personnel who manage, perform and verify work relating to and affecting safety and pollution prevention.*

*3.3 The Company is responsible for ensuring that adequate resources and shore based support are provided to enable the designated person or persons to carry out their functions.*

The IMO provided to the second meeting of the High-Level Tripartite Working Group on Maritime Labour Standards (TWGMLS) from 14 – 18 October 2002 a paper pointing out the strengths and weaknesses of the linkage between the MLC and the ISM Code.<sup>133</sup> It was pointed-out by the IMO in relation to the above-mentioned definition of “company” in the ISM Code that “recognizing that no two shipping companies or shipowners are the same, and that ships operate under a wide range of different conditions, the Code is based on general principles and objectives. The Code is expressed in broad terms so that it can have a widespread application.”<sup>134</sup> The system required under the provisions of the ISM Code is, however, more focused as it is directed towards a company safety and environmental protection policy.<sup>135</sup> It is stated by the IMO that the safety

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<sup>131</sup> Regulation 1, paragraph 2, Chapter IX *Management for the safe operation of ships* of the Annex to the 1974 SOLAS Convention.

<sup>132</sup> Paragraph 1.1.4, ISM Code.

<sup>133</sup> High-Level Tripartite Working Group on Maritime Labour Standards (TWGMLS) (Second meeting), 14-18 October 2002. Two information papers prepared by the International Maritime Organization (IMO) for the meeting. Information paper I, p. 1-5, *supra* note 5.

<sup>134</sup> *Ibid*, p. 1.

<sup>135</sup> *Supra* note 133, p. 3.

management system under the ISM Code might also ensure compliance with similar technical ILO standards:<sup>136</sup>

*This particularly so if a requirement for survey and certification was to be adopted to address existing "technical" ILO requirements such as those contained in the Accommodation of Crews Convention (Revised), 1949 (No. 92), and the Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133).*

Some provisions of the Prevention of Accidents (Seafarers) Convention, 1970 (Convention No. 134), and the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (Convention No. 180), are compatible with the general ISM Code objective and fits in with the ISM Code requirement for the safety management system.<sup>137</sup> But in respect of the Seamen's Articles of Agreement Convention, 1926 (Convention No. 22), it is stated by the IMO:

*(...) the Seamen's Articles of Agreement Convention, 1926 (No. 22), (...) appear to be less compatible with an ISM Code safety management system limited to addressing safety and environmental protection. A company system might include structured and documented procedures addressing the simple process of signing articles of agreement, but such a system does not appear to be appropriate for determining the particulars of any agreement or its enforcement.<sup>138</sup>*

Accordingly, it can be concluded that although the ISM Code contains a definition of “company” which is very similar to the definition of “shipowner” contained in the MLC, the concept of *company* in the ISM Code is different to the concept of *shipowner* in the MLC. A reason for this difference is that the objective of the ISM Code is not to address maritime labour issues such as the identification of the responsible person for seafarers’ employment. However, the ISM Code contains a provision which ensures the identification of the owner of the ship, i.e. paragraph 3.1 *Company responsibilities and authority* of the ISM Code (cited above) requires that if the entity who is responsible for the operation of the ship is other than the owner, the owner must report the full name and details of such entity to the Administration. That means that a flag State should always have information on the shipowner. The MLC is missing a similar provision, which would be very useful for the identification of the responsible party in respect of seafarers’ claims.

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<sup>136</sup> *Supra* note 133, p. 4.

<sup>137</sup> *Supra* note 133, p. 4.

<sup>138</sup> *Supra* note 133, p. 4.

### 2.2.2. Other IMO conventions

Not all IMO conventions contain a definition of “shipowner” or “company” – the responsible entity for obligations established by the conventions. The IMO conventions containing relevant definitions are mentioned below. The Nairobi International Convention on The Removal of Wrecks, 2007 (NAIROBI WRC),<sup>139</sup> defines a registered owner and operator of a ship:

*“Registered owner” means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship at the time of the maritime casualty. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the operator of the ship, “registered owner” shall mean such company.*

*“Operator of the ship” means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all duties and responsibilities established under the International Safety Management Code, as amended.<sup>140</sup>*

International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM Convention), 2004,<sup>141</sup> contains a definition of “company”:

*“Company” means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who on assuming such responsibility has agreed to take over all the duties and responsibilities imposed by the International Safety Management Code.<sup>142</sup>*

The definition of “company” is in line with the one contained in the ISM Code. It follows that the definition of “company” is used not to define the owner of a ship but to refer to the ISM Company as defined in the ISM Code. The ISM Company is responsible for the implementation of the BWM Convention requirements on a ship. The reference to the owner is also used by the

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<sup>139</sup> Nairobi international convention on the removal of wrecks, 2007, adopted: 18 May, 2007; entry into force: 14 April 2015. Text of the convention is available at: <http://folk.uio.no/erikro/WWW/Wreck%20Removal%20Convention.pdf> Last visited in March 2020.

<sup>140</sup> Article 1, Paragraph 8 and 9, Nairobi international convention on the removal of wrecks, 2007, *supra* note 139.

<sup>141</sup> International Convention for the Control and Management of Ships' Ballast Water and Sediments (BWM Convention), adopted: 13 February 2004; entry into force: 8 September 2017. Text of the BWM Convention is available at: <http://library.arcticportal.org/1913/1/International%20Convention%20for%20the%20Control%20and%20Management%20of%20Ships%27%20Ballast%20Water%20and%20Sediments.pdf> Last visited March 2020.

<sup>142</sup> Section A – General provisions, Regulation A-1 Definitions, paragraph 3, Annex of the BWM Convention, *ibid*.

Convention. For example, the owner, operator or other person in charge of the ship shall report an accident which occurs to a ship or if a defect is discovered which substantially affects the ability of the ship to conduct Ballast Water Management in accordance with this Convention.<sup>143</sup>

The International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKER), 2001,<sup>144</sup> defines a shipowner and registered owner:

*3 "Shipowner" means the owner, including the registered owner, bareboat charterer, manager and operator of the ship.*

*4 "Registered owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However, in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "registered owner" shall mean such company.<sup>145</sup>*

Accordingly, BUNKER makes a distinction between a person who has an ownership link to a ship (a registered owner) and the term “shipowner” which include persons not necessarily having an ownership link to a ship. For discussing general liability for pollution damage according to the Convention, the term “shipowner” is used. The obligation of a registered owner of a ship, particularly, is to maintain insurance or other financial security, such as the guarantee of a bank or similar financial institution, to cover the liability of the registered owner for pollution damage.<sup>146</sup> Under Article 3, paragraph 2 of the BUNKER, where more than one person is liable for pollution damage caused by any bunker oil on board or originating from the ship, their liability shall be joint and several.

The International Convention on Civil Liability for Oil Pollution Damage (CLC), 1992,<sup>147</sup> contains the definition:

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<sup>143</sup> Section E – Survey and certification requirements for ballast water management, Regulation E-1 Surveys, Paragraph 7, Annex of the BWM Convention, *supra* note 141.

<sup>144</sup> International Convention on Civil Liability for Bunker Oil Pollution Damage (BUNKER), 2001, adopted: 23 March 2001; entry into force: 21 November 2008. Text of BUNKER available at: <https://cil.nus.edu.sg/wp-content/uploads/formidable/18/2001-International-Convention-on-Civil-Liability-for-Bunker-Oil-Pollution-Damage.pdf> Last visited March 2020.

<sup>145</sup> Article 1, Paragraph 3 and 4, BUNKER, *supra* note 144.

<sup>146</sup> Article 7, paragraph 1, BUNKER, *supra* note 144.

<sup>147</sup> International Convention on Civil Liability for Oil Pollution Damage (CLC), 1969, adopted: 29 November 1969; entry into force: 19 June 1975; Being replaced by 1992 Protocol, adopted: 27 November 1992, entry into force: 30 May 1996. Available at: [https://iopcfunds.org/wp-content/uploads/2018/06/Text-of-Conventions\\_e.pdf](https://iopcfunds.org/wp-content/uploads/2018/06/Text-of-Conventions_e.pdf) Last visited in March 2020.

*"Owner" means the person or persons registered as the owner of the ship or, in the absence of registration, the person or persons owning the ship. However in the case of a ship owned by a State and operated by a company which in that State is registered as the ship's operator, "owner" shall mean such company.*<sup>148</sup>

The International Convention on Standards of Training, Certification and Watchkeeping (STCW), 1978,<sup>149</sup> defines a company:

*.25 Company means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the shipowner and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed on the company by these regulations;*<sup>150</sup>

STCW, 1978, does not make reference, specifically, to the owner of a ship – a person having ownership interest in the ship.

Article 1, paragraph 2 of the Convention on Limitation of Liability for Maritime Claims, 1976 (LLMC, 1976)<sup>151</sup>, as amended, states that the term "shipowner" shall mean the owner, charterer, manager and operator of a seagoing ship.<sup>152</sup>

The Convention on Facilitation of International Maritime Traffic (FAL), 1965<sup>153</sup>, contains the definition:

*Shipowner. One who owns or operates a ship, whether a person, a corporation or other legal entity, and any person acting on behalf of the owner or operator.*<sup>154</sup>

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<sup>148</sup> Article 1, paragraph 3, CLC, 1969; Article 1, paragraph 3, 1992 Protocol. The same definition of "owner" is used also by Article 1, paragraph 2 of the International Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage (FUND), 1971, adopted: 18 December 1971; entry into force: 16 October 1978, superseded by 1992 Protocol: adopted: 27 November 1992; entry into force: 30 May 1996. Available at: [https://iopcfunds.org/wp-content/uploads/2018/06/Text-of-Conventions\\_e.pdf](https://iopcfunds.org/wp-content/uploads/2018/06/Text-of-Conventions_e.pdf) Last visited in March 2020.

<sup>149</sup> International Convention on Standards of Training, Certification and Watchkeeping (STCW), 1978, adopted: July 1978, entry into force: 28 April 1984. Amended 1995 and 2010 Manila amendments.

<sup>150</sup> Chapter I Regulation I/1, paragraph 1.23., Annex to STCW, *ibid*.

<sup>151</sup> Convention on limitation of liability for maritime claims, 1976 (LLMC, 1976), adopted: 19 November 1976, entry into force: 1 December 1986.

<sup>152</sup> Article 1, paragraph 2, LLMC, as amended, *ibid*.

<sup>153</sup> The Convention on Facilitation of International Maritime Traffic (FAL), 1965, adopted: 9 April 1965; entry into force: 5 March 1967.

<sup>154</sup> Section 1 - Definitions and general provisions, Annex to the FAL, *ibid*.

Reference in the definition to the *legal entity* is that which makes the definition in FAL, 1965, different from definitions in other conventions.

In addition, the Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974,<sup>155</sup> (PAL) can be mentioned. Article 1, paragraph 1 of PAL defines “carrier” and “performing carrier” as the following:

- 1. (a) “carrier” means a person by or on behalf of whom a contract of carriage has been concluded, whether the carriage is actually performed by him or by a performing carrier;*
- (b) “performing carrier” means a person other than the carrier, being the owner, charterer or operator of a ship, who actually performs the whole or a part of the carriage;*

Accordingly, PAL makes clear distinction between the person who concludes the contract and the person who *performs* the contract. As well, Article 4 of PAL contains clear regulation on the liability of carrier and performing carrier. It follows from Article 4, paragraph 1 of PAL that the carrier, a person by or on behalf of whom a contract of carriage has been concluded, is the final responsible person for the entire carriage even if the performance of the carriage or part, thereof, has been entrusted to another person – a performing carrier:

- 1. If the performance of the carriage or part thereof has been entrusted to a performing carrier, the carrier shall nevertheless remain liable for the entire carriage according to the provisions of this Convention. In addition, the performing carrier shall be subject and entitled to the provisions of this Convention for the part of the carriage performed by him.*
- 2. The carrier shall, in relation to the carriage performed by the performing carrier, be liable for the acts and omissions of the performing carrier and of his servants and agents acting within the scope of their employment.*
- 3. Any special agreement under which the carrier assumes obligations not imposed by this Convention or any waiver of rights conferred by this Convention shall affect the performing carrier only if agreed by him expressly and in writing.*
- 4. Where and to the extent that both the carrier and the performing carrier are liable, their liability shall be joint and several.*
- 5. Nothing in this Article shall prejudice any right of recourse as between the carrier and the performing carrier.*

According to the IMO conventions, several terms are used to define a responsible person. A responsible person can be a very wide group of persons not always having ownership relations

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<sup>155</sup> Convention Relating to the Carriage of Passengers and their Luggage by Sea (PAL), 1974, adopted: 13 December 1974; entry into force: 28 April 1987; 2002 Protocol: adopted: 1 November 2002; entry into force: 23 April 2014.

to a ship. Also, some conventions require an ownership link to the person responsible in respect of the implementation of the convention. Under NAIROBI and BUNKER, and CLC, an ownership link is required for a responsible person – a registered owner or, in the absence of registration, the person or persons owning the ship. BUNKER is the only convention which also addresses the joint and several liability of the owner of a ship and other persons acting on behalf of the owner. PAL regulates liability of the person signing the contract and the person performing the contract. None of the IMO conventions contain the phrase “*regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner*”, used to indicate the final responsibility of the shipowner, as it is stated by the MLC.

### 2.3. ILO conventions

ILO conventions are the main source of international labour law.<sup>156</sup> The ILO provides the forum for the development of international labour standards in all spheres of industrial activity; shipping is only one of them:

*The ILO has, throughout its history, responded to the changing needs of the maritime industry by the adoption of instruments that provide a framework for decent work at sea. These maritime standards may be truncated and incomplete but they do provide a basis for solving many of the problems that have been identified in the maritime industry.*<sup>157</sup>

The ILO, also a specialized agency of the United Nations, has a prominent role in the development of uniformity in international maritime law.<sup>158</sup> Since 1920, the ILC has adopted almost a hundred standards on maritime work, covering a very diverse range of topics; such as: the minimum age for admission into employment, contracting and placement, medical examinations, enrolment contracts, paid holidays, social security, working hours and rest periods, crew accommodation, identity documents, health and safety at work, welfare at sea and in port, continuity of employment, as well as vocational training, and certificates of aptitude.<sup>159</sup> The

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<sup>156</sup> Jean – Michel Servais, *International Labour Law. International Labour Law*, Hague, Kluwer Law International, 2005, p. 63.

<sup>157</sup> ILO: An analysis of the essential aspects of decent work in the maritime context, Working paper for discussion at the Sub-Group of the High-Level Tripartite Working Group on Maritime Labour Standards (first meeting), doc. STWGMLS/2002/5 (Geneva, 2002), pp. 5, *supra* note 5.

<sup>158</sup> See <http://www.ilo.org/global/lang--en/index.htm> Last visited in March 2020.

<sup>159</sup> The major ILO Conventions affecting seafarers are: Minimum Age (Sea) Convention, 1920 (No. 7)

organization has also adopted recommendations, directives and reports dealing with topics of interest for seafarers. The MLC consolidates and updates more than 60 international maritime labour instruments (Conventions and Recommendations) adopted by the ILC since 1920.<sup>160</sup> A full list of ILO instruments in respect of seafarers is found in Annex C.

Most of the ILO conventions do not define “shipowner” or any other term used to refer to a responsible party in maritime labour law. The term “shipowner” is defined only by several ILO conventions starting from 1996.

Article 2, paragraph 1 of the Unemployment Indemnity (Shipwreck) Convention, 1920 (Convention No. 8)<sup>161</sup>, states that: in every case of loss or foundering of any vessel, the owner or person with whom the seaman has contracted for service on board the vessel shall pay to each seaman employed thereon an indemnity against unemployment resulting from such loss or foundering.

Article 1.1 (c) of the Recruitment and Placement of Seafarers Convention, 1996 (Convention No. 179)<sup>162</sup>, defines the shipowner as the following:

*the term shipowner means the owner of the ship or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for operation of the ship from the shipowner*

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Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)  
Placing of Seamen Convention, 1920 (No. 9)  
Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)  
Seamen's Articles of Agreement Convention, 1926 (No. 22)  
Repatriation of Seamen Convention, 1926 (No. 23)  
Officers' Competency Certificates Convention, 1936 (No.53)  
Holidays with Pay (Sea) Convention, 1936 (No. 54)  
Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)  
Sickness Insurance (Sea) Convention, 1936 (No. 56)  
Hours of Work and Manning (Sea) Convention, 1936 (No. 57)  
Minimum Age (Sea) Convention (Revised), 1936 (No. 58)  
Food and Catering (Ships' Crews) Convention, 1946 (No. 68)  
Certification of Ships' Cooks Convention, 1946 (No. 69)  
Social Security (Seafarers) Convention, 1946 (No. 70)  
Paid Vacations (Seafarers) Convention, 1946 (No. 72)  
Medical Examination (Seafarers) Convention, 1946 (No. 73)

<sup>160</sup> Report I(1A). Adoption of an instrument to consolidate maritime labour standards. Documents and reports submitted to the ILC, 94th (Maritime) Session, 2006, p. 4, *supra* note 5; See also Article X of the MLC.

<sup>161</sup> Text of the Convention No. 8 is available at:  
[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312153:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312153:NO) Last visited in March 2020.

<sup>162</sup> Text of the Convention No. 179 is available at:  
[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312324:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312324:NO) Last visited in March 2020.

*and who on assuming such responsibilities has agreed to take over all the attendant duties and responsibilities;*

Article 2 (e) of Convention No. 180<sup>163</sup> and Article 1 (2) (g) of Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (Recommendation No. 187)<sup>164</sup>, contain similar definitions to the one mentioned above; the only difference is that an agent is excluded from the definition:

For the purpose of this Convention:

*(...) (e) the term shipowner means the owner of the ship or any other organization or person, such as the manager or bareboat charterer, who has assumed the responsibility for the operation of the ship from the shipowner and who on assuming such responsibility has agreed to take over all the attendant duties and responsibilities.*

The afore-mentioned definition is very similar to the one contained in the ISM Code and SOLAS, 1974.

CEACR in respect of the definition of “shipowner” in Convention No. 180 requested Denmark:

*Please indicate by what means it is ensured that the term “shipowner” shall be understood as the owner of the ship or any other organization or person, such as the manager or bareboat charterer, who has assumed the responsibility for the operation of the ship from the shipowner and who, on assuming such responsibility, has agreed to take over all the attendant duties and responsibilities.*<sup>165</sup>

Denmark in answer to the request of CEACR promised to review legal regulation prior to ratification of the MLC.<sup>166</sup>

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<sup>163</sup> Text of the Convention No. 180 is available at:

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312325:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312325:NO) Last visited in March 2020.

<sup>164</sup> Text of the Recommendation No. 187 is available at:

[https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312525:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312525:NO) Last visited in March 2020.

<sup>165</sup> See Direct Request (CEACR) - adopted 2009, published 99th ILC session (2010). Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180) - Denmark (Ratification: 2003). CEACR note in respect of Article 2, subparagraph (e). Definition of “shipowner”. This and further CEACR comments on implementation of the MLC in Member States are available at <http://www.ilo.org/dyn/normlex/en/f?p=1000:20010::NO::> Last visited in March 2020.

<sup>166</sup> See Direct Request (CEACR) note in respect of Article 2, subparagraph (e). Definition of “shipowner”: *The Committee notes the Government’s statement that the Merchant Shipping Act and Order No. 515/2002 will be reviewed prior to the forthcoming ratification of the MLC, 2006.* Direct Request (CEACR) - adopted 2010, published

It follows from the definitions in the ILO conventions that the responsible person can be not only the owner of a ship but, also, bareboat charterer, manager or agent, persons who are not owners of a ship but who have assumed the responsibility for the operation of the ship from the shipowner and who, on assuming such responsibility, have agreed to take over all the attendant duties and responsibilities. Under Article 2, paragraph 1 of Convention No. 8, a responsible person in every case of loss or foundering of any vessel can be the owner or, also, the person with whom the seaman has contracted for service on board the vessel. No additional requirements for this other person are given in this Convention. Neither a delegation of the responsibilities of the shipowner to other persons acting as the employer nor joint and several liability of several persons involved in employment of seafarers is addressed by the ILO conventions. The term “employer” is used by several conventions; however, not to refer to persons other than the shipowner responsible for seafarers’ employment but as a synonym for the term “shipowner”.<sup>167</sup> In some conventions, reference to the “employer other than the shipowner” is used to make distinction between the persons falling under category of seafarers for the purposes of the particular convention and persons exempted from the scope of the convention, for example in Article 2, paragraph 1 (f) of the Paid Vacations (Seafarers) Convention, 1946 (Convention No. 72):<sup>168</sup>

*1. This Convention applies to every person who is engaged in any capacity on board a vessel except (...) (f) persons employed on board by an employer other than the shipowner, except radio officers or operators in the service of a wireless telegraphy company;*

Article 3, paragraph 1 of Convention No. 22<sup>169</sup> states that articles of agreement shall be signed both by the shipowner or his representative and by the seaman. However, information about the shipowner is not listed in the list of information to be inserted in the SEA.<sup>170</sup> Neither the

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100th ILC session (2011). Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180) - Denmark (Ratification: 2003), *ibid*.

<sup>167</sup> See, for example, Holidays with Pay (Sea) Convention, 1936 (No. 54), Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91). Text of the Conventions is available at: <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12030:0::NO:::Seafarers> Last visited in March 2020.

<sup>168</sup> See also Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55), Article 1.2 (b); Medical Examination (Seafarers) Convention, 1946 (No. 73), Article 2 (b); Social Security (Seafarers) Convention, 1946 (No. 70) Article 1.2. (d); Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91), Article 2.1. (f). Text of the Conventions is available at: <https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12030:0::NO:::Seafarers> Last visited in March 2020.

<sup>169</sup> Text of the Convention No. 22 is available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312167:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312167:NO) Last visited in March 2020.

<sup>170</sup> Convention No. 22, Article 6, paragraph 3:

information and reports on the application of ILO conventions and recommendations, starting from 1932,<sup>171</sup> nor the Report from the CEARC Survey of the Reports on the Merchant Shipping (Minimum Standards) Convention (Convention No. 147)<sup>172</sup> and the Merchant Shipping (Improvement of Standards) Recommendation (Recommendation No. 155), 1976,<sup>173</sup> do not contain the essential discussions raised in respect of the identification of the responsible shipowner in the SEA.

A 2011 report from CEACR contains comments made by the Netherlands Trade Union Confederation (FNV), dated 30 August 2010, on the application of Convention No. 22. The FNV contended that, at the time of ratification, Convention No. 22 was fully implemented in Dutch legislation. The comments continued, however, that, at the time of writing, the convention was being seriously violated; because, many seafarers did not have a labour contract with the shipowner. These seafarers were employed by an employment agency in the Netherlands or a crewing agency outside the country, work without an agreement signed by the shipowner or the shipowner's representative and, as a consequence, did not enjoy the protection of the convention.<sup>174</sup>

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3. *It shall in all cases contain the following particulars:*

- (1) the surname and other names of the seaman, the date of his birth or his age, and his birthplace;*
- (2) the place at which and date on which the agreement was completed;*
- (3) the name of the vessel or vessels on board which the seaman undertakes to serve;*
- (4) the number of the crew of the vessel, if required by national law;*
- (5) the voyage or voyages to be undertaken, if this can be determined at the time of making the agreement;*
- (6) the capacity in which the seaman is to be employed;*
- (7) if possible, the place and date at which the seaman is required to report on board for service;*
- (8) the scale of provisions to be supplied to the seaman, unless some alternative system is provided for by national law;*
- (9) the amount of his wages;*
- (10) the termination of the agreement and the conditions thereof, that is to say:*
  - (a) if the agreement has been made for a definite period, the date fixed for its expiry;*
  - (b) if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the seaman shall be discharged;*
  - (c) if the agreement has been made for an indefinite period, the conditions which shall entitle either party to rescind it, as well as the required period of notice for rescission; provided that such period shall not be less for the shipowner than for the seaman;*
- (11) the annual leave with pay granted to the seaman after one year's service with the same shipping company, if such leave is provided for by national law; (12) any other particulars which national law may require.*

<sup>171</sup> Information and reports on the application of ILO Conventions and Recommendations available: <http://www.ilo.org/public/libdoc/ilo/P/09661/> Last visited in March 2020.

<sup>172</sup> Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_ILO\\_CODE:C147](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C147) Last visited in March 2020.

<sup>173</sup> Report of the CEACR General Survey of the Reports on the Merchant Shipping (Minimum Standards) Convention (No. 147) and the Merchant Shipping (Improvement of Standards) Recommendation (No. 155), 1976, *supra* note 42.

<sup>174</sup> Report of the CEACR submitted to the 100th session of ILC, 2011: Seamen's Articles of Agreement Convention, 1926 (No. 22), p. 765. Available at: <https://www.ilo.org/public/libdoc/ilo/P/09661/> Last visited in March 2020.

In 1957, Spain made the following submission in respect of the Placing of Seamen Convention, 1920 (Convention No. 9),<sup>175</sup> on duration of the SEA in the case of shipwreck:

*According to a more recent approach, articles of agreement bind the seaman to the shipowners or shipping company and not to the vessel in which he is serving. As a result, loss of the vessel through shipwreck is not tantamount to unemployment since the crew remains in the employ of the undertaking. The latter may, however, ask the competent labour authorities for authorisation to reduce or discharge the ship's personnel.*<sup>176</sup>

Several ILO conventions establish the obligation for Member States to ensure that there is sufficient information submitted to seafarers about the content of SEA's. It follows from the relevant provisions of ILO conventions that the seafarer not only should be simply informed, but it shall be assured that the seafarer understands the content of the SEA and necessary advice, and that an explanation is also provided, if necessary. Convention No. 22 requires that national law make adequate provision to ensure that the seaman has understood the agreement.<sup>177</sup> Article 7 of Convention No. 9 states that the necessary guarantees for protecting all parties concerned shall be included in the contract of engagement or articles of agreement, and proper facilities shall be assured to seamen for examining such contracts or articles before and after signing. Convention No. 179, which revised Convention No. 9, also contains the obligation to ensure that the seafarer has information on the content of the SEA as stated in Article 5, paragraph 2:

*All recruitment and placement services shall ensure that:*

*... (b) contracts of employment and articles of agreement are in accordance with applicable laws, regulations and collective agreements;*

*(c) seafarers are informed of their rights and duties under their contracts of employment and the articles of agreement prior to or in the process of engagement; and*

*(d) Proper arrangements are made for seafarers to examine their contracts of employment and the articles of agreement before and after they are signed and for them to receive a copy of the contract of employment.*

The conclusion is that there is a formal requirement that information about the responsible shipowner is provided in the SEA and so, accordingly, available to the seafarer, under ILO

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<sup>175</sup> Text of Convention No. 9 is available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_INSTRUMENT\\_ID:312154:NO](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312154:NO) Last visited in March 2020.

<sup>176</sup> Summary of reports on ratified conventions submitted to the 40th session of ILC, 1957: Placing of Seamen Convention, 1920, p. 28-29. Available at: <https://www.ilo.org/public/libdoc/ilo/P/09661/> Last visited March 2020.

<sup>177</sup> Article 3, paragraph 1 and 4, Convention No.22, *supra* note 169.

conventions. However, ILO conventions do not address problems with the identification of the responsible employer, characteristic to the shipping practice ; for example, the problems of the identification of the responsible employer in the case where more than one person is performing some obligation in respect of seafarer's recruitment and employment, or the liability of different persons involved in the employment of seafarers.

## 2.4. UNCCRO's

UNCCRO's<sup>178</sup> was adopted in 1986 following a protracted and difficult series of UNCTAD meetings and conference sessions.<sup>179</sup> Although UNCCRO's did not come into force, it is worth mentioning this convention as evidence of international discussions and the endeavour to ensure the identification and accountability of shipowners and operators as a prerequisite for effective control of ships by flag states.

Acknowledging the importance of the identification of the ship owner as the one who can be held accountable for the management and operation of a ship, the following obligations for the State of registration were inserted in UNCCRO's:

- The state of registration shall enter in its register of ships, inter alia, information concerning the ship's owner or owners;<sup>180</sup>
- The state of registration shall take necessary measures to ensure that the owner or owners or any other person who can be held accountable for the management and operation of ships flying its flag can be easily identified by persons having a legitimate interest in obtaining such information;<sup>181</sup>
- A state shall take necessary measures to ensure that ships it enters in its register of ships have owners or operators who are adequately identifiable for the purpose of ensuring their full accountability.<sup>182</sup>

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<sup>178</sup> The 1986 United Nations Convention on Conditions for Registration of Ships (UNCCRO's), adopted: 7 February 1986. Not in force. Information on status, as well text of is available at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XII-7&chapter=12&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XII-7&chapter=12&clang=_en) Last visited in March 2020.

<sup>179</sup> Pr. K. Mukherjee, M. Brownrigg, *supra* note 2.

<sup>180</sup> Article 6, paragraph 1, UNCCRO's.

<sup>181</sup> Article 6, paragraph 2 and 3, UNCCRO's.

<sup>182</sup> Article 6, paragraph 6, UNCCRO's.

Article 2 of UNCCRO's contains the following definitions:

*“Owner” or “shipowner” means, unless clearly indicated otherwise, any natural or juridical person recorded in the register of ships of the State of registration as an owner of a ship,*

*“Operator” means the owner or bareboat charterer, or any other natural or juridical person to whom the responsibilities of the owner or bareboat charterer have been formally assigned,*

The idea behind the adoption of UNCCRO's was phasing out open registry fleets. Essentially it defined the concept of *genuine link* in the earlier conventions of the Law of the Sea and the degree of jurisdiction and control a flag State should have over the ships flying its flag “with regard to identification and accountability of shipowners and operators, as well as with regard to administrative, technical, economic and social matters”.<sup>183</sup> The adoption of UNCCRO's was not easy as there were groups with different interests. In the result, the Convention does not require any specific qualifications for ownership; it only requires that national law is such that there is effective control and jurisdiction over its ships.

In respect of seafarers' employment, the State of registration shall ensure:

*(a) that the manning of ships flying its flag is of such a level and competence as to ensure compliance with applicable international rules and standards, in particular those regarding safety at sea,*

*(b) that the terms and conditions of employment on board ships flying its flag are in conformity with applicable international rules and standards)*

*(c) that adequate legal procedures exist for the settlement of civil disputes between seafarers employed on ships flying its flag and their employers)*

*(d) that nationals and foreign seafarers have equal access to appropriate legal processes to secure their contractual rights in their relations with their employers.<sup>184</sup>*

Recalling flag State responsibility prescribed by UNCLOS, UNCCRO's was adopted on 7 February 1986<sup>185</sup> containing more detailed requirements of what the State of registration shall ensure in respect of the management of ship owning companies and ships before entering a ship in its register of ships:

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<sup>183</sup> Pr. K. Mukherjee, M. Brownrigg, *supra* note 2.

<sup>184</sup> Article 9 (6), UNCCRO's.

<sup>185</sup> See Preamble of UNCCRO's:

*Recalling also that according to the 1958 Geneva Convention on the High Seas and the 1982 United Nations Convention on the Law of the Sea there must exist a genuine link between a ship and a flag State and conscious of the duties of the flag State to exercise effectively its jurisdiction and control over ships flying its flag in accordance with the principle of the genuine link.*

*(...) The State of registration should ensure that the person or persons accountable for the management and operation of a ship flying its flag are in a position to meet the financial obligations that may arise from operation of such a ship to cover risks which are normally insured in international maritime transportation in respect of damage to third parties. To this end the State of registration should ensure that ships flying its flag are in a position to provide at all times documents evidencing that an adequate guarantee, such as appropriate insurance or any other equivalent means, has been arranged. Furthermore, the State of registration should ensure that an appropriate mechanism, such as a maritime lien, mutual fund, wage insurance, social security scheme, or any governmental guarantee provided by an appropriate agency of the State of the accountable person, whether that person is an owner or operator, exists to cover wages and related monies owed to seafarers employed on ships flying its flag in the event of default of payment by their employers. The State of registration may also provide for any other appropriate mechanism to that effect in its laws and regulations.<sup>186</sup>*

Under the provision cited above, the State should require that the owner of the ship meets its financial obligations as well as that some financial system should be in place to cover wages and related monies owed to seafarers employed on ships flying its flag in the event of default of payment by their employers. The implementation of the above-mentioned Convention would require considerable financial investments from governments or shipowners to ensure the payment of seafarers' wages. This could be one of the reasons why this convention did not come into force.

## **2.5. The Vienna Convention on Consular Relations, 1963**

The Vienna Convention on Consular Relations<sup>187</sup> was adopted on 24 April 1963 and entered into force on 19 March 1967. As of 10 January 2020, the Vienna Convention on Consular Relations, 1963, has 180 parties.<sup>188</sup>

Supervision of respective vessels and their crews and the providing of assistance to them is also part of consular functions of every sovereign State according to Article 5 of the Vienna Convention on Consular Relations, 1963:

*Consular functions consist in:*

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<sup>186</sup> Article 10 (3), UNCCRO's.

<sup>187</sup> Vienna Convention on Consular Relations, 1963. Text of the Convention is available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=III-6&chapter=3](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-6&chapter=3) Last visited in March 2020.

<sup>188</sup> Information on status of Vienna Convention on Consular Relations, 1963 is available at: [https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=III-6&chapter=3](https://treaties.un.org/pages/ViewDetails.aspx?src=TREATY&mtdsg_no=III-6&chapter=3) Last visited in March 2020.

*(...) (k) exercising rights of supervision and inspection provided for in the laws and regulations of the sending State in respect of vessels having the nationality of the sending State, and of aircraft registered in that State, and in respect of their crews;*

*(l) extending assistance to vessels and aircraft mentioned in subparagraph (k) of this article, and to their crews, taking statements regarding the voyage of a vessel, examining and stamping the ship's papers, and, without prejudice to the powers of the authorities of the receiving State, conducting investigations into any incidents which occurred during the voyage, and settling disputes of any kind between the master, the officers and the seamen insofar as this may be authorized by the laws and regulations of the sending State,<sup>189</sup>*

Similar to obligations of the flag State, it is prescribed by paragraph 5 of the MLC *Standard A2.5.1.-Repatriation*:

*If a shipowner fails to make arrangements for or to meet the cost of repatriation of seafarers who are entitled to be repatriated:*

*(a) the competent authority of the Member whose flag the ship flies shall arrange for repatriation of the seafarers concerned; if it fails to do so, the State from which the seafarers are to be repatriated or the State of which they are a national may arrange for their repatriation and recover the cost from the Member whose flag the ship flies (...).*

The Vienna Convention on Consular Relations, 1963, regulates consular relations between States and does not address issues on a shipowner's liability or the identification of the responsible shipowner.

## **2.6. Legal concept of *shipowner* under the MLC**

### **2.6.1. Application of the MLC**

The MLC aims to secure the right of all seafarers to decent employment.<sup>190</sup> The definition of "seafarer" is given by MLC Article II (1) (f), which states that:

*seafarer means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies.*

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<sup>189</sup> Article 5, Vienna Convention on Consular Relations, 1963.

<sup>190</sup> Article 1, paragraph 1, MLC.

Additionally, it is emphasized by Article II (2) of the MLC that the Convention applies to all seafarers, except as expressly provided otherwise. The work on board a ship to which the Convention applies is a key element for a person to be regarded as a seafarer. Under Article II (1) (i) of the MLC, a 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.*

The MLC applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities, except: ships engaged in fishing or in similar pursuits, ships of traditional build, warships, and naval auxiliaries.<sup>191</sup> In the event of doubt on the applicability of the MLC to a particular category of ships, the question should be determined by the Member State's authority in consultation with shipowners' and seafarers' organizations.<sup>192</sup> Additionally, Article II (6) of the MLC allows the Member States to exempt particular categories of ships from application of certain provisions of the MLC Code. It is clear that the MLC applies to cargo and passenger ships navigating on international voyages. However, application of MLC requirements to specific categories of ships such as larger yachts engaged in commercial activities, e.g. FPSO's (floating, production, storage, and offloading units) and MODU's (mobile offshore drilling units), could be disputable as some of these means of navigation are not always considered to be ships under law and application of all MLC provisions to them could be impossible in practice.

Although the wording of the definition is clear it is also very wide. The definition covers not only categories of persons traditionally associated with the seafarer's profession, such as master, engineer, first mate, officer, and bosun, but also all persons that may be involved for some period in work on board a ship; for example, the personnel of cruise ships (e.g., cleaning personnel, guest entertainers, casino personnel, kitchen staff, or fitness instructors), cadets, harbour pilots and port workers, ship inspectors, superintendents and repair technicians, armed security personnel on a ship, and so on. Many of these categories raised doubts whether they can be regarded as seafarers in relation to the seafarers' rights ensured by the MLC – the right to have a written SEA with the shipowner, the right to receive wages paid by the shipowner and other payments due under the SEA, the right to repatriation, and the like.<sup>193</sup> It is also recognised by the MLC drafters that there

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<sup>191</sup> Article II (4), MLC.

<sup>192</sup> Article II (5), MLC.

<sup>193</sup> See S. Lielbarde, "Concept of seafarer before and after the Maritime Labour Convention 2016 (comparative analysis of the legal effects of defining legal concept in the shape of legal terminology)", Riga, March 2017, RGSL Research Papers, No.17. Available at [http://www.rgsl.edu.lv/wp-content/uploads/2017/03/Lielbarde\\_final.pdf](http://www.rgsl.edu.lv/wp-content/uploads/2017/03/Lielbarde_final.pdf) Last visited in March 2020.

may be doubts whether a particular category or categories of persons who may perform work on board a ship is covered by the MLC or not. In the event of doubt as to whether any categories of persons are regarded as seafarers for the purpose of the MLC, Article II (3) of the MLC offers some flexibility for the Member States to determine it in consultation with shipowners' and seafarers' organizations.

Taking into account the extended discussions on the definition of "seafarer" during adoption of the MLC, as well as after, and considering the need for clarity over the application of the MLC to specific categories, as well as the need to provide uniformity in the application of the rights and obligations provided by the MLC, the General Conference of the ILO at its 94th (Maritime) Session on 22 February 2006 adopted Resolution VII *Resolution concerning information on occupational groups*.<sup>194</sup> The resolution provides Member States with guidelines which can be taken into account in deciding to grant seafarer status to a specific occupational group or not. The resolution only assists in the interpretation of Article II (I) (f) of the MLC and the final decision is up to the Member States. In granting seafarer status, the following issues should be considered:

- (i) *the duration of a person's stay on board;*
- (ii) *the frequency of periods of work spent on board;*
- (iii) *the location of a person's principal place of work;*
- (iv) *the purpose of a person's work on board;*
- (v) *the protection that would normally be available to the persons concerned with regard to their labour and social conditions to ensure they are comparable to that provided for under the Convention.*

Application of the MLC nationally is effected by the principle of substantial equivalence.<sup>195</sup> This presupposes, however, that the level of protection of the international regulation is maintained in the national regulation and that it fully contributes to acquiring the general goal and purpose of

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<sup>194</sup> Resolution VII *Resolution concerning information on occupational groups* adopted by the 94th (Maritime) Session of the ILC, Geneva, 7-23 February, 2006. Available at: [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---normes/documents/publication/wcms\\_088130.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---normes/documents/publication/wcms_088130.pdf) Last visited in March 2020.

<sup>195</sup> Article VI, paragraph 3 and 4, MLC:

3. *A Member which is not in a position to implement the rights and principles in the manner set out in Part A of the Code may, unless expressly provided otherwise in this Convention, implement Part A through provisions in its laws and regulations or other measures which are substantially equivalent to the provisions of Part A.*

4. *For the sole purpose of paragraph 3 of this Article, any law, regulation, collective agreement or other implementing measure shall be considered to be substantially equivalent, in the context of this Convention, if the Member satisfies itself that:*

(a) *it is conducive to the full achievement of the general object and purpose of the provision or provisions of Part A of the Code concerned; and*

(b) *it gives effect to the provision or provisions of Part A of the Code concerned.*

the international regulation.<sup>196</sup> At the same time, it may create concern that States can lay down temporary standards that are lower than those normally prescribed and that this would enable ratifying States to derogate certain duties that would, in turn, result in maintaining sub-standards.<sup>197</sup> Chapter 4.1. of the thesis contains an example of the Netherlands' attempt to use a principle of substantial equivalence to derogate from the Standard A2.1, paragraph 1(a) of the MLC, requiring the SEA to be signed by the shipowner. CEACR opinion was that the measures adopted by the Netherlands cannot be considered as substantially equivalent to the requirements of the MLC.<sup>198</sup>

Although there are both pros and cons regarding the application of the MLC, if we observe from a long-term point of view, the MLC gives every stakeholder some advantages.<sup>199</sup>

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<sup>196</sup> M. L. Pragola Putra, "MLC 2006 – a blessing or curse to maritime stakeholders", Institut Teknologi Sepuluh, November, 2015, p. 7-9. Available in database Academia. Last visited in March 2020.

<sup>197</sup> D. M. Gunasekera, *supra* note 71, p. 34.

<sup>198</sup> See Direct Request (CEACR) - adopted 2019, published 109th ILC session (2020). Maritime Labour Convention, 2006 (MLC, 2006) – Netherlands (Ratification: 2011). CEACR note in respect of Regulation 2.1 and Standard A2.1, paragraph 1(a). Seafarers' employment agreements. Signature of seafarer and shipowner or a representative, *supra* note 165.

<sup>199</sup> M. L. Pragola Putra, *supra* note 195, lists following advantages:

**Advantages For Seafarers**

- *A comprehensive set of basic maritime labour principles and rights as well as ILO fundamental rights*
- *Convention spells out in one place and clear language seafarers' basic employment rights*
- *Seafarers better informed of their rights and of remedies available*
- *Improved enforcement of minimum working and living conditions*
- *Right to make complaints both on board and ashore*
- *Clear identification of who is the shipowner with overall responsibility, for the purposes of this Convention*

**Advantages for Shipowners**

- *A more level playing field to help ensure fair competition and to marginalize substandard operations*
- *Will benefit from a system of certification, including a certification system possible for ships less than 500 GT, if the Shipowner so requests*
- *A more socially responsible shipping industry*
- *A better protected and more efficient workforce*
- *Help ensure that ships are operated safely and securely with few problems and few delays in ports*
- *New Convention contains minimum standards that are well within the current industry practice and should easily be met by most shipowners*

**Advantages For Governments (Flag State)**

- *Simplification of reporting obligations (One Convention rather than many)*
- *Wider powers of enforcement on all ships*
- *Improved quality of shipping services*
- *Improved protection of the environment*
- *Additional flexibility with firmness of rights and flexible as how to implement, making the Convention easier to ratify and implement*
- *Certification system mandatory only for ships over 500 GT*
- *Protection against unfair competition from substandard ships through "No More favourable treatment" for ships of non-ratifying countries*
- *Implementation of mandatory requirements through measures that are substantially equivalent, except for Part V*
- *Advantages given to ships of ratifying countries*

### ***2.6.2. Structure of the MLC***

The MLC has the structure of IMO conventions, which is innovative if compared with ILO conventions. The structure consists of: the Articles, the Regulations, and the Code, including mandatory standards and non-mandatory recommendations.

The MLC contains 16 Articles. The Articles and Regulations set out the core rights and principles and the basic obligations of Members ratifying the convention.<sup>200</sup> The Articles are mandatory for the MLC parties. The Articles stipulate the general obligations of the parties, the scope of MLC application, the fundamental rights and principles of the protection of seafarers' social rights, the implementation and enforcement responsibilities as well as provisions in respect of entry into force, denunciation and amendment procedure.

The Code consists of Regulations, mandatory Standards (Part A) and non-mandatory Guidelines (Part B). The Regulations and the Code are organized into 5 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.

Each Title contains groups of provisions relating to a particular right or principle (or enforcement measure, as in Title 5). Each Title also consists of the Regulation, its purpose, the main principles, and the Standards and Guidelines.

In the Annex to the MLC there are seven Appendixes, prescribing the content of the documents required or recommended under the MLC. Appendix A2-I prescribes the content of the certificate or other documentary evidence which certifies that there is a financial security system to assist seafarers in the event of their abandonment under Standard A2.5.2, paragraph 2 of the MLC; Appendix A4-I prescribes content of the certificate or other documentary evidence which certifies that there is a financial security system to cover seafarers' contractual claims under Regulation 4.2 of the MLC; Appendix B4-I contains the recommended Model Receipt and Release Form to be used in the event of payment of contractual claims; Appendix A5-II prescribes form and content of the MLC certificate, DMLC and Interim MLC certificate to be issued by the flag State under Article 5 and Title 5 of the MLC; Appendix B5-I contains the recommended example

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<sup>200</sup> Paragraph 3, Explanatory note to the Regulations and Code of the Maritime Labour Convention, MLC.

of a national DMLC, and the list of working and living conditions to be inspected and approved by the flag State before certifying the ship (Appendix A5-I) as well as areas that are subject to a detailed inspection by the PSC (Appendix A5-III).

Although the provisions of Part B of the Code are not mandatory,<sup>201</sup> Article VI, paragraph 2 of the MLC states that:

*Each Member undertakes to respect the rights and principles set out in the Regulations and to implement each Regulation in the manner set out in the corresponding provisions of Part A of the Code. In addition, the Member shall give due consideration to implementing its responsibilities in the manner provided for in Part B of the Code.*

### **2.6.3. General overview of analysis and methods**

A terminological unit, or a term, is a conventional symbol that represents a concept defined within a particular field of knowledge.<sup>202</sup> Terms are not isolated units occurring outside a specific context; terms are related to all other terms that form part of the same special subject with which they form a conceptual field.<sup>203</sup>

A concept is a unit consisting of a set of characteristics. Concepts differ from each other in that they possess different characteristics. The expression of the set of characteristics of a concept is its paraphrase or definition.<sup>204</sup> A good conceptual description must, therefore, include this opposition of distinctive characteristics that distinguishes concepts.<sup>205</sup>

The legal meaning of a legal term in its textual context does not always appear plainly. When a word and concept with an established core of meaning goes beyond its ordinary use, the result is ambiguity and inconsistency.<sup>206</sup> The direction towards a concept of a term is given by the definition, of which the functions are:

- 1) to determine the limits of a concept; that is to say: to distinguish the content of words, ideas and things from the content of cognate words, ideas and things,
- 2) to stipulate a new meaning of the word; or

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<sup>201</sup> Article VI, paragraph 1, MLC.

<sup>202</sup> M. T. Cabre, *Terminology. Theory, methods and application*, Amsterdam/Philadelphia, John Benjamins Publishing Company, 1999., 81. p.

<sup>203</sup> M. T. Cabre, *ibid*, p. 99.

<sup>204</sup> M. T. Cabre, *supra* note 202, p. 95.

<sup>205</sup> M. T. Cabre, *supra* note 202, p. 96.

<sup>206</sup> G. Tessuto, *supra* note 88, p. 286.

3) to give precision to some vague everyday meaning.<sup>207</sup>

According to the ISO standard 1087 (1990): a definition is a statement which describes a concept and which permits its differentiation from other concepts within a conceptual system.<sup>208</sup>

Terms can be analysed from three points of view: the formal (the designation), the semantic (the concept) and the functional (the grammatical category and distribution).<sup>209</sup>

In order to explain how an infinite number of words, phrases and sentences can be meaningful, semanticists apply the principle of compositionality, i.e. the semantic meaning of any unit of language is determined by the semantic meanings of its parts, along with the way they are put together.<sup>210</sup> However, the content of a legal provision is wider than the semantic (linguistic) meaning of the words and sentences of a legal text and, thus, the meaning cannot be discovered without regard to the intention of the author of the text. Semantic content is merely a tool that we use to convey and ascertain communicative content.<sup>211</sup> The mentioned is established, also, in the VCLT.

In accordance with Article 31 of the VCLT, the general rule of the interpretation of treaties is that a treaty shall be interpreted, in good faith, in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose. Any other agreement or instrument related to the treaty, or practice in the application of the treaty, as well as preparatory work for the treaty and the circumstances of its conclusion can be used in order to find the meaning of the terms of the treaty.<sup>212</sup>

Along these lines, the word “shipowner” is commonly employed in everyday language. Generally, the evidence of ownership rests in the documents of registration and the executed bill of sale. However, registration of a ship in the ship registry is not conclusive evidence but provides

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<sup>207</sup> J. van der Staak, “Standard structures: basic concepts used as frames to explain words in legal discourse”, in J. Engberg, A. Trosborg, (eds.), *Linguists and lawyers – issues we confront: Arbeiten zu Sprache und Recht*, Tostedt, Attikon-Verlag, 1997, p. 92.

<sup>208</sup> M. T. Cabre, *supra* note 202, 104. p.

<sup>209</sup> M. T. Cabre, *supra* note 202, 82. p.

<sup>210</sup> P. Portner, “Meaning”, in R. Fasold, J. Connor-Linton, (eds.), *An introduction to language and linguistics*, Cambridge, Cambridge University Press, 2006, p. 141.

<sup>211</sup> M. Greenberg, “Legislation as communication? Legal interpretation and the study of linguistic communication”, in A. Marmor, Sc. Soames, (eds.), *Philosophical foundations of language in the law*, Oxford, Oxford University Press, 2011, p. 225.

<sup>212</sup> Article 31 and 32, Vienna Convention on the Law of Treaties 1969.

*prima facie* evidence of the registered owner being the true owner.<sup>213</sup> Additionally, legislation does have the power to define a term for the purposes of legislation by assigning a special meaning for the term in legal language.<sup>214</sup> Accordingly, the term “shipowner” in the context of the MLC does not always, and taking into account modern shipping practice: very rarely does, refer to the true owner of the ship. The term “shipowner” is just the technical designation of a concept belonging to the conceptual system of a language for special purposes, in the particular case for the purposes of maritime labour law.<sup>215</sup>

This chapter aims to describe the relations between the legal term “shipowner” and its concept. The research in this chapter contains a linguistic analysis of the term “shipowner” in textual context as it is defined by the MLC. Next, the legislative intention of the MLC drafters in respect of the term in the light of the object and purpose of the MLC is presented in order to establish a concept of *shipowner*.

#### **2.6.4. Term and definition**

Article II (1) (j) of the MLC defines the term “shipowner” as the following:

*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 fulfill certain of the duties or responsibilities on behalf of the shipowner.*

From the compositional perspective<sup>216</sup>, the definition of “shipowner” can be divided into several parts. The first part, “*shipowner means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer*”, mentions specific categories of persons (a manager, agent or bareboat charterer) who can be a shipowner under the MLC. The term “agent” in shipping is used to cover a wide range of different persons and intermediaries providing services for the shipowner. The use of the words “*another organization or person*” covers unlimited categories of persons and organizations. It follows that the shipowner for MLC

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<sup>213</sup> A. Maderaka-Sheppard, *supra* note 40, p. 295.

<sup>214</sup> R. Harris, Ch. Hutton, *Definition in Theory and Practice. Language, Lexicography and the Law*, London, Continuum, 2007, p. 153.

<sup>215</sup> H. E. S. Mattila, *Comparative Legal Linguistics*, Farnham, Ashgate, 2013, p. 108.

<sup>216</sup> P. Portner, *supra* note 210, p. 159.

purposes can be not only the person who is the real owner of a ship, as can be understood from the word “shipowner” in everyday language use, but also other persons not having ownership relation to the ship can be regarded as shipowners in context of the MLC. Accordingly, legislation in this case uses the power to define a term for the purposes of legislation by attributing a special meaning to the term “shipowner” in legal language of maritime labour law.

The next phrase, “*who has assumed the responsibility for the operation of the ship from the owner*”, is very important because it contains essential criteria for the organization or person to be recognized as the MLC shipowner, i.e., the person has assumed responsibility for the operation of the ship. This criterion considerably limits a wide group of different persons and organizations who can be potential shipowners. In shipping practice, the other person who may take responsibility for operation of the ship can be the bareboat charterer. Under BIMCO, in a standard bareboat charter contract, known as BARECON, with the latest edition of this contract being BARECON 2017, a bareboat charterer is taking responsibility for operation of the ship, including recruitment and placement of the crew.<sup>217</sup> The other person who may take responsibility for operation of a ship can also be the management company. The shipowner or bareboat charterer based on a management contract usually delegates the responsibility for operation of a ship to a third party, i.e. the management company, called also the ISM Company.<sup>218</sup>

The next part of the definition, “*and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Convention*”, contains the next criterion and further limits the scope of potential shipowners. The contract between the shipowner and person or organization assuming responsibility for the operation of a ship has to contain the specific provision on assuming responsibility imposed on

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<sup>217</sup> BARECON 2017, Clause 13 Maintenance and operation

*(d) Operation of the Vessel*

*The Charterers shall at their own expense crew, victual, navigate, operate, supply, fuel, maintain and repair the Vessel during the charter period and they shall be responsible for all costs and expenses whatsoever relating to their use and operation of the Vessel, including any taxes and fees. The Crew shall be the servants of the Charterers for all purposes whatsoever, even if for any reason appointed by the Owners.*

<sup>218</sup> BIMCO MLC Clause for SHIPMAN 1998 and SHIPMAN 2009 contains following sub-clauses:

*(a) Subject to Clause 3 (Authority of the Managers), the Managers shall, to the extent of their Management Services, assume the Shipowner’s duties and responsibilities imposed by the MLC for the Vessel, on behalf of the Shipowner.*

*(b) The Owners shall ensure compliance with the MLC in respect of any crew members supplied by them or on their behalf.*

*(c) The Owners shall procure, whether by instructing the Managers under Clause 7 (Insurance Arrangements) or otherwise, insurance cover or financial security to satisfy the Shipowner’s financial security obligations under the MLC.*

(Sub-clause (a), BIMCO MLC Clause for SHIPMAN 1998 and SHIPMAN 2009, Recommended Additional MLC 2006 Clauses for BIMCO Contracts, BIMCO Special Circular No. 2 – 10 June 2013.)

shipowners under the MLC. The MLC Clause of the BIMCO standard contract, SHIPMAN 2009 (D Annex), can be mentioned as an example:

*(a) Subject to Clause 3 (Authority of the Managers), the Managers shall, to the extent of their Management Services, assume the Shipowner's duties and responsibilities imposed by the MLC for the Vessel, on behalf of the Shipowner.*

Contrary to SHIPMAN 2009, the standard bareboat charter contract, BARECON 2017, does not contain direct reference that a bareboat charterer assuming responsibility for operation of a ship assumes, also, responsibility imposed by the MLC.

The last part of the definition, “*regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner*”, indicates that the person as owner of the ship or other persons assuming responsibility for a ship operation, including responsibilities in relation to the MLC, has a shipowner’s status and responsibility irrespective of other contractual arrangements the shipowner may have with other persons and organizations.

In sum, the definition of “shipowner” in the MLC aims to cover all corporate structures and legal entities which can be involved in maintenance of a single ship on behalf of the shipowner. It follows from the definition of the MLC term “shipowner” that there should be a shipowner – one responsible person for every particular case. Taking into account this principle the MLC Standards require that information on the shipowner – the final responsible person, be inserted in the SEA<sup>219</sup> and signed by both the seafarer and the shipowner or representative of the shipowner.<sup>220</sup> If the representative is not an employee of the shipowner then evidence of contract or similar arrangement between the shipowner and the person signing the SEA on behalf of the shipowner should be enclosed in the SEA.<sup>221</sup> The purpose of the afore-mentioned requirement is to ensure that a seafarer has information on the shipowner even if the SEA is signed by a third person.

From the reports of Member States on the implementation of the MLC, afore-mentioned in this thesis, it follows that, in practice, this requirement is not always observed. Moreover, one study on the implementation of labour-supplying responsibilities pursuant to the MLC carried out for the European Commission established:

*The contracting party of the seafarer's SEA may be different from the ship owner, in the case of SRPS acting on behalf of the shipowner, or the rare cases of bareboat chartering. The most common discrepancy found*

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<sup>219</sup> Standard A2.1, paragraph 4 (b), MLC.

<sup>220</sup> Standard A2.1, paragraph 1 (a), MLC.

<sup>221</sup> Standard A2.1, paragraph 1 (a), MLC.

*is in respect to the information in the SEA and in particular the recording of the name of the MLC shipowner. This is required to establish the link between the SRPS and that entity. Trade unions want to force RPS to take on the liabilities of shipowners relating to seafarers' employment agreements, where the RPS is acting as a crew manager. The RPS claims, on the other hand, that it only signs the SEA on behalf of the shipowner, and therefore should not be liable for the failure of the shipowner to adhere to the terms of employment of the SEA (e.g. repatriation, bankruptcy etc.).*<sup>222</sup>

### **2.6.5. Legislative intention**

The drafters of the MLC at the TWGMLS (second meeting), 14-18 October 2002, considered the definitions of “seafarer” and “shipowner” not only in ILO maritime instruments but also in other relevant international instruments.<sup>223</sup> Terms such as “owner”, “company” and “carrier” appear to have similar meanings as “shipowner” in ILO instruments.<sup>224</sup>

The STWGMLS (second meeting), on 3-7 February 2003, decided that the definition of “shipowner” consistent with ILO and IMO conventions should be retained.<sup>225</sup> Additionally, the use of the term “employer” was discussed.<sup>226</sup>

The definition of “shipowner” in the MLC preliminary draft was as in the following:

*(i) the term shipowner means the owner of the ship or any other organization or person, such as the manager or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner or other organization or person and who on assuming such responsibility has agreed to take*

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<sup>222</sup> Study on the implementation of labour supplying responsibilities pursuant to the Maritime Labour Convention (MLC 2006) carried out for the European Commission. Final report 21 October, 2015, p. 53. Available at: [http://ec.europa.eu/transport/modes/maritime/studies/maritime\\_en.htm](http://ec.europa.eu/transport/modes/maritime/studies/maritime_en.htm)

<sup>223</sup> High-level Tripartite Working Group on Maritime Labour Standards (Second meeting), 14-18 October, 2002. TWGMLS/2002/4: Definitions and scope of application provisions in existing ILO maritime instruments and related texts, *supra* note 5.

<sup>224</sup> See paragraph 9-11, High-level Tripartite Working Group on Maritime Labour Standards (Second meeting), 14-18 October, 2002. TWGMLS/2002/4: Definitions and scope of application provisions in existing ILO maritime instruments and related texts, *supra* note 5.

<sup>225</sup> Final report of Tripartite Subgroup of the High-Level Tripartite Working Group on Maritime Labour Standards (STWGMLS) (second meeting) 3-7 February 2003, ILO Doc. No. STWGMLS/2003/8, *supra* note 5, p. 35.

<sup>226</sup> Final report of Tripartite Subgroup of the High-Level Tripartite Working Group on Maritime Labour Standards (STWGMLS) (second meeting) 3-7 February 2003, ILO Doc. No. STWGMLS/2003/8, *supra* note 5, paragraph 55, 56, 58 and Annex 5 *Report of the Drafting Group on Definitions* at p. 35:

*It was concluded that the current definition of shipowner, which is consistent with ILO and IMO conventions, should be retained. It was decided that the term “employer” should be defined in the specific parts of the Code where it is used and should not be defined in the Articles.*

*over all the attendant duties and responsibilities. (modified definition taken from C.179, C.180, ISM Code (for company))*<sup>227</sup>

Use of the term “employer” was also discussed again by the TWGMLS (third meeting) between 30 June-4 July 2003.<sup>228</sup> However, preparatory meetings which followed did not bring considerable changes to the previous draft’s definition. Accordingly, the definition in the MLC draft submitted to the ILC, 94th (Maritime) Session, 7-23 February 2006, was the following:

*(j) shipowner means the owner of the ship or any other 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 or other organization or person and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Convention. (modified C.179A1/1c; modified ISM, Reg. 1, paragraph 2).*<sup>229</sup>

Report I (1A), submitted to the ILC, 94th (Maritime) Session, gives a summary on the development and the legislative intention in regards to the definition of “shipowner”. It is stated by the report that the definition of “shipowner” is based on the definition in the Convention No. 179 and it is similar to the definition of “company” adopted by the IMO in international safety management provisions of the SOLAS, 1974. It is also emphasized that the definition reflects the principle that shipowners are the responsible employers under the convention with respect to all seafarers on board, without prejudice to the right of the shipowner to recover the costs involved from others who may also have responsibility for the employment of a particular seafarer, as expressly stated in Standard A2.5, paragraph 4 of the MLC on repatriation.<sup>230</sup>

Nevertheless, the definition was discussed again during the 94th (Maritime) Session of the ILC, 7-23 February 2006. The proposal submitted by the Government members was to add at the

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<sup>227</sup> High-Level Tripartite Working Group on Maritime Labour Standards (TWGMLS) (Third meeting), 30 June – 4 July 2003, ILO Doc. No. TWGMLS/2003/2: Consolidated maritime labour Convention (First draft), Articles and Regulations, p. 3, *supra* note 5.

<sup>228</sup> Final report of High-level Tripartite Working Group on Maritime Labour Standards (third meeting) 30 June-4 July 2003, ILO Doc. No. TWGMLS/2003/10, *supra* note 5, paragraph 239:

239. *A Government representative pointed out that Standard A.4.2, paragraph 1(a), lacked a definition of “employer”, and that the new definition of “shipowner” was not sufficient. He recalled the results of the High-level Group on the subject (May 2002) and the proposal of joint responsibility of shipowners and manning agencies. It should be decided whether “employers other than shipowners” should be added.*

<sup>229</sup> The 94th (Maritime) Session of the ILC, Geneva, 7-23 February 2006, Reports and documents submitted to the conference: Report I(1B). Proposed consolidated maritime labour Convention, Article II (1) (j), *supra* note 5.

<sup>230</sup> The 94th (Maritime) Session of the ILC, Geneva, 7-23 February 2006, Reports and documents submitted to the conference: Report I(1A) - Adoption of an instrument to consolidate maritime labour standards - (PDF 1 MB), Note 3 (Article II), Paragraph 6, *supra* note 5.

end of the text of the definition of “shipowner” the phrase “*irrespective of any subcontracting to other organizations or persons to perform certain duties and responsibilities on his or her behalf*”.<sup>231</sup> The proposal was similar to the one which was proposed at the Tripartite Intersessional Meeting on the Follow-up to the Preparatory Technical Maritime Conference (PTMC), Geneva, 21-27 April 2005.<sup>232</sup> The purpose of that proposal in 2005 was to clarify that the convention is addressed to the shipowner as a person with the “final responsibility” for the operation of a ship irrespective of contractual relationships, irrespective of the entity or person who represents him. However, the proposal was rejected at this meeting in 2005.<sup>233</sup> It was discussed again by the ILC in 2006 that a definition should avoid confusion and the risk that it would create a situation in which responsibilities could be endlessly passed from one party to another and in which it would be very difficult to identify an actual shipowner.<sup>234</sup> Because of its importance for the purpose of this thesis, the 2006 discussion should be outlined, as below (author’s underlining):

*125. The Chairperson opened a general discussion on the issues raised in amendment D.8, submitted by the Government members of Austria, Belgium, Bulgaria, Cyprus, Denmark, Estonia, Finland, France, Germany, Greece, Iceland, Ireland, Italy, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Romania, Slovenia, Spain, Sweden and United Kingdom, which sought to delete in the second line of subparagraph 1(j) the word “agent” and to add at the end of the text the words “, irrespective of any subcontracting to other organizations or persons to perform certain duties and responsibilities on his or her behalf”.*

*126. The Government member of the United Kingdom explained that the amendment comprised two elements. The deletion of the word “agent” was proposed solely for the sake of consistency, since a very similar definition of “shipowners” was provided in the International Safety Management (ISM) Code, 1993. The additional text had been drafted to clarify the provision and remove any uncertainty regarding the definition of a shipowner.*

*127. The Employer Vice-Chairperson supported the deletion of “agent”, given its use in the ISM Code, as well as the inclusion of additional text proposed. This would clarify the point that the person ultimately responsible under the Convention was the shipowner, irrespective of the entity or person who represented him.*

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<sup>231</sup> The 94th (Maritime) Session of the ILC, Geneva, 7-23 February 2006, Conference session documents: Report of the Committee of the Whole. P. 7/20 (Paragraph 125), *supra* note 5.

<sup>232</sup> Tripartite Intersessional Meeting on the Follow-up to the Preparatory Technical Maritime Conference, 21-27 April 2005, ILO Doc. No. PTMC/2005/2: Compendium of proposed amendments to the draft consolidated maritime labour Convention, 2006, p. 8, *supra* note 5.

<sup>233</sup> *Ibid*, ILO Doc. No. PTMC/2005/23: Final Report, p. 44 (Paragraph 350).

<sup>234</sup> The 94th (Maritime) Session of the ILC, Geneva, 7-23 February 2006, Conference session documents: Report of the Committee of the Whole. P. 7/20-7/24, 7/124 (Paragraph 125-152), *supra* note 5.

128. *The Worker Vice-Chairperson recalled that the term “agent” was used in the Recruitment and Placement of Seafarers Convention, 1996 (No. 179) and therefore was not redundant. The responsibilities under the proposed Convention were significant and the shipowner was ultimately responsible. The speaker did not challenge the intent of the amendment, which was meant to facilitate identification of those responsible for ensuring compliance with the proposed Convention. The wording of the amendment led to confusion, however.*

129. *The Government member of Japan indicated that he would oppose the amendment, which would modify wording which was basically that contained in several international Conventions, including the SOLAS and STCW Conventions, the International Ship and Port Facility Security (ISPS) Code and ILO Conventions No. 179 and the Seafarers’ Hours of Work and the Manning of Ships Convention, 1996 (No. 180). By introducing new language, there was a danger that serious administrative difficulties could be caused if the meaning of the term “shipowner” differed from that used in other related instruments. Moreover if, as indicated by the sponsors of the amendment, there was no intent to introduce a substantive change, the amendment was not needed. Rather than increasing clarity, its effect would be to amplify uncertainties. The problem arose in situations in which a particular shipowner (“A”) decided to delegate certain operating or managerial responsibilities to another party (“B”), who would then pass certain responsibilities to a third party (“C”) making it extremely difficult for the seafarer or the public authorities to identify the party truly responsible for fulfilling the obligations under the Convention, for example in relation to the payment of wages. The risk was that the proposed new wording would create a situation in which responsibilities could be endlessly passed from one party to another and in which it would be very difficult to identify the actual shipowner. The inclusion of such a clause would help unscrupulous shipowners to avoid their responsibilities.*

130. *The Government member of Egypt expressed opposition to the deletion of the term “agent”, which was contained in other Conventions that needed to be taken into account in the present instrument. In practice, port state authorities very frequently contacted agents and representatives of shipowners, especially in the case of ships flying foreign flags, as it would otherwise be very difficult to identify the shipowner. The proposed additional text failed to clarify the original text and was likely to create further confusion.*

131. *The Government member of Norway indicated that the problem lay with the very structure of the shipping industry, and the need for definitions to be adapted to current realities, rather than the other way round. It was very common for functions, such as manning, technical management or commercial operation, to be subcontracted to other entities. In such a situation, it was necessary to be able to identify the party with the final responsibility. In a context of shared or subcontracted responsibilities, the amendment sought to make it easier to identify the single responsible entity, irrespective of any subcontracting arrangements which might be in place.*

132. *The Government member of the United Kingdom affirmed that the purpose of the amendment was to provide greater clarity and precision in identifying the ultimate single responsible entity in a complex situation in which the management of ships often involved many subcontracting arrangements. Referring to the example given by the Government member of Japan, he stressed that the intent was to be able to identify party “A”. He recalled that in the proposed maritime labour certificate and sample declaration of maritime labour compliance, there was only a single line to enter the details of the shipowner. If any of the wording was causing confusion, such as the term “irrespective”, which might be clearer in the French and Spanish versions of the amendment, the input of the Drafting Committee would be welcome.*

133. The Government member of France confirmed that the intent of the amendment was to avoid any dilution of responsibility, especially in triangular employment relationships. The French version of the proposed amendment was clear.

134. The Government member of Germany added that the amendment sought to ensure that the responsibilities set out in the Convention could not be avoided through delegation or subcontracting arrangements. It was not the aim of the amendment to reduce the responsibilities of shipowners, but to define them more clearly.

135. The Government member of Singapore believed that the present text of subparagraph 1(j) was sufficiently clear. It should not be modified.

136. The Government member of Spain believed that the proposed amendment served an important purpose in taking into account the real situation in today's world in social and labour relations. The shipowner needed to be clearly identified as the ultimately responsible party, regardless of any subcontracting arrangement. The Spanish version might need to be referred to the Drafting Committee, as a minor inconsistency had slipped into the text as compared to the English and French versions.

137. The Government member of Malta proposed that the term "irrespective" in the English version of the amendment, which appeared to be causing some confusion, could be brought closer to the French and Spanish versions, for example by using a term such as "independently".

138. The Government member of Japan reaffirmed his opposition to the amendment. It was the duty of governments to protect the rights of seafarers, even where necessary, by making use of administrative or judicial proceedings. Objective criteria were therefore required for the identification of the shipowner. The wording used in the Convention should be that used in other ILO and IMO instruments so as to prevent any dilution of the protection afforded to seafarers, or any blame being attached to national authorities for failure to protect their rights. The word "irrespective" seemed to be a source of confusion.

139. The Government member of Panama supported the comment made by the Government member of the United Kingdom. The main issue was to ensure that the responsibility of the shipowner was not diluted.

140. The Government member of South Africa said that the amendment created confusion as to the entity ultimately responsible for the vessel. The amendment would also dilute the protection provided under joint and several liability.

141. The Government member of Denmark said that the amendment was essential. The objective was to define the shipowner so as to clearly show who was ultimately responsible for discharging the responsibilities set out in the Convention. Shared responsibility was often weakened responsibility.

142. The Government member of Greece said that the amendment did not encourage subcontracting. However, in cases where subcontracting did exist, the competent authority needed to be able to identify the entity ultimately responsible for the operation of the ship.

143. The Government member of Australia stated that a specific party would have to request the maritime labour certificate from the government, and would be required to provide all relevant information. As with the IMO ISM Code, 1993, finding the entity whose name was on the certificate would not be difficult, since that entity had approached the authorities originally to obtain the certificate.

144. The Government member of Benin agreed with the Government members of Japan and Singapore that it would be best to be consistent with the definitions used in other international instruments. Rather than adding clarity, the amendment created greater confusion.

*145. The Employer Vice-Chairperson noted that the proposed language allowed for many interpretations. The Convention would be harmed by this kind of ambiguity. The Committee's intent was that the responsibility should remain ultimately with the shipowner. Perhaps the Drafting Committee could assist in clarifying the language while maintaining this intent.*

*146. The Worker Vice-Chairperson said that some clarity had been provided by the discussion. The Workers' group was aware of issues such as flags of convenience and beneficial owners, and therefore supported any wording which made it easier to identify the true responsible entity. However, there appeared to be a problem with the drafting of the proposed amendment. It might be clearer, for example, if the various sections of subparagraph (j) could be broken up, perhaps using dashes, so as to make it clear that the phrase "irrespective of any subcontracting to other organizations or persons to perform certain duties and responsibilities on his or her behalf" referred to all of the possible entities identified. The Workers' group could support the amendment if it served the purpose for which it was intended. However, it did not yet do so and would therefore need to be submitted to the Drafting Committee for possible restructuring. The Workers' group opposed the deletion of the word "agent".*

*147. The Government member of the United Kingdom agreed that the matter could be referred to the Drafting Committee, with the understanding that the discussion of the issue would resume within the Committee subsequent to the advice provided by the Drafting Committee.*

*148. The Chairperson noted the Committee's agreement on the intended meaning of subparagraph (j) and referred the matter to the Drafting Committee.*

*149. The Drafting Committee proposed the following wording for Article II, paragraph 1(j):*

*(j) 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 organizations or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.*

*150. The Employer and Worker Vice-Chairpersons supported the proposal.*

*151. The Committee adopted proposal C.R./D.4 from the Drafting Committee. As a result, amendment D.8 fell.<sup>235</sup>*

The proposed amendment was accepted by the 94th (Maritime) Session of the ILO. From the discussions during the 94th (Maritime) Session of the ILC, 7-23 February 2006, it follows that the aim of this amendment was not to reduce responsibilities of the shipowner but to define more clearly that the shipowner is the party with final responsibility, without prejudice to the right of a shipowner to recover the costs from others who may also have had certain duties and obligations towards seafarers' employment.

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<sup>235</sup> The 94th (Maritime) Session of the ILC, Geneva, 7-23 February 2006, Conference session documents: Report of the Committee of the Whole. P. 7/20-7/24 (paragraph 125-151), *supra* note 5.

Discussions and questions on the concept of *shipowner* under the MLC continue to be discussed after adoption of the MLC. At the second meeting of the Preparatory Tripartite MLC 2006 Committee, in 2011, the Representative of the Government of the Republic of Korea asked the Office for an informal opinion on the definition of the term “shipowner”:

*Recalling that in many cases the owner of a ship assumes the duties and responsibilities provided for in the SEA but delegates the responsibility of the operation of the ship to a ship management company, which may entail some confusion and difficulties in implementing the MLC in a proper manner, he raised the following three questions: first, can the owner of the ship holding only the contractual duties and responsibility under the MLC, 2006, be recognized as the shipowner in the context of the Convention? Second, in the event the entity to which the Maritime Labour Certificate is issued and the entity to which the ISM Certificate is issued are different, would this situation be in conformity with the requirements of the MLC, 2006? Third, should this issue be left to the flag State’s own discretion and practice?<sup>236</sup>*

In answering the Representative of Korea’s question, a Deputy Secretary-General explained that the ILO Office had a specific procedure for dealing with interpretation requests and, therefore, it would be inappropriate at this stage to give a spontaneous reply to what seemed to be a complicated set of legal questions. The ILO Office took note of the request and promised a reply in a timely manner.<sup>237</sup>

In 2016, at the second meeting of the Special Tripartite Committee established under Article XIII of the MLC, a representative of the Government of the Bahamas pointed out that an outstanding issue concerned the definition of “shipowner”, the party signing the SEA. He mentioned that while these elements were covered by the ILO publication of Frequently Asked Questions (FAQs) on the MLC, which contains very specific questions and answers, it was still necessary to clarify the status of the FAQs.<sup>238</sup> The only answer which followed this question was that the Secretary-General, in response to the question concerning the FAQs, quoted the Preface

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<sup>236</sup> Second meeting of the Preparatory Tripartite MLC, 2006 Committee (Geneva, 12–14 December 2011): Final report, GB.313/LILS/INF/1, paragraph 187. Documents of Preparatory Tripartite MLC, 2006 Committee and the Special Tripartite Committee are available at: [https://www.ilo.org/global/standards/maritime-labour-convention/special-tripartite-committee/WCMS\\_459566/lang--en/index.htm](https://www.ilo.org/global/standards/maritime-labour-convention/special-tripartite-committee/WCMS_459566/lang--en/index.htm)

<sup>237</sup> Second meeting of the Preparatory Tripartite MLC, 2006 Committee (Geneva, 12–14 December 2011): Final report, GB.313/LILS/INF/1, paragraph 188, *supra* note 236.

<sup>238</sup> Final report Second meeting of the Special Tripartite Committee established under Article XIII of the Maritime Labour Convention, 2006 (MLC, 2006), (Geneva, 8–10 February 2016), STCMLC/2016/7, paragraph 26, *supra* note 236.

of the FAQs, which stated that “the answers provided in the FAQs cannot in themselves be cited as authoritative legal opinions”.<sup>239</sup>

ILO’s publication of FAQ’s about the MLC also addresses the question of the shipowner being identified in the SEA.<sup>240</sup> Mentioned in the answer for the question *B14. Who is the shipowner under the MLC, 2006?*<sup>241</sup>, the FAQ’s state that, irrespective of the particular commercial arrangements regarding the operation of a ship, there must be a single entity having overall responsibility that is responsible for seafarers’ living and working conditions. In answer to the question *C2.1.d. Who must sign a seafarers’ employment agreement (SEA)?*, it is stressed that any signatory other than a shipowner should produce a signed “power of attorney” or other document showing that he/she is authorized to represent the shipowner.<sup>242</sup> In answer to the question *C2.1.e. Can the employer of a seafarer supplying a seafarer to the ship sign the seafarers’ employment agreement (SEA) as the shipowner?*, the ILO explains that while another person supplying a seafarer to the ship may have concluded an employment contract with that seafarer, and be responsible for implementing that contract, including payment of wages, for example, the shipowner will still have the overall responsibility vis-à-vis the seafarer. Such an employer could, therefore, only sign the SEA as a representative of the shipowner (assuming that the employer has a signed power of attorney from the shipowner).<sup>243</sup> Accordingly, it clearly follows that the legislative intention of the MLC is that the SEA should contain information on the shipowner of a

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<sup>239</sup> Final report Second meeting of the Special Tripartite Committee established under Article XIII of the Maritime Labour Convention, 2006 (MLC, 2006), (Geneva, 8–10 February 2016), STCMLC/2016/7, paragraph 27, *supra* note 236.

<sup>240</sup> Maritime Labour Convention, 2006 (MLC, 2006). Frequently Asked Questions (FAQ). International Labour Office, Geneva, 4<sup>th</sup> edition, 2015, p. 26. Available at: <https://www.ilo.org/global/standards/maritime-labour-convention/lang-en/index.htm>

See B14. Who is the shipowner under the MLC, 2006?; C2.1.d. Who must sign a seafarers’ employment agreement (SEA)?; C2.1.e. Can the employer of a seafarer supplying a seafarer to the ship sign the seafarers’ employment agreement (SEA) as the shipowner?

<sup>241</sup> ILO publication: FAQ on the MLC, *ibid*, p. 26:

*B14. Who is the shipowner under the MLC, 2006? The MLC, 2006 defines a shipowner as “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 the Convention ...”. This definition applies even if any other organizations or persons fulfil certain of the duties or responsibilities on behalf of the shipowner. This comprehensive definition was adopted to reflect the idea that, irrespective of the particular commercial or other arrangements regarding a ship’s operations, there must be a single entity, “the shipowner”, that is responsible for seafarers’ living and working conditions. This idea is also reflected in the requirement that all seafarers’ employment agreements must be signed by the shipowner or a representative of the shipowner [see C2.1. Seafarers’ employment agreements] [see C2.1.e. Can the employer of a seafarer supplying a seafarer to the ship sign the seafarers’ employment agreement (SEA) as the shipowner?].*

<sup>242</sup> ILO publication: FAQ on the MLC, *supra* note 240, p. 37.

<sup>243</sup> ILO publication: FAQ on the MLC, *supra* note 240, p. 38.

ship even if the other person signing the SEA is doing so on behalf of the shipowner, or acting as an employer.

Additionally, paragraph 1 (a) of the Standard A2.1 – *Seafarers' employment agreements*<sup>244</sup> of the MLC implicitly supports the principle of the final responsible person; the paragraph states that if the SEA is signed by the representative of the shipowner not having any employment relations with the shipowner, evidence of contractual or similar arrangements shall be added. This is to ensure that a seafarer has information on the shipowner – the final responsible person.

Furthermore, in regards to the content of the SEA, the question of the acceptability of an electronic signature in the context of the SEA according to the ILO FAQ's is one, covered under general contract law (the appointment of a representative is another such question, for example), that is left by the Convention to be determined by national law and practice of the flag State (or other law which the flag State recognises as applying to the SEA).<sup>245</sup>

The legislative intention in respect of the concept of *shipowner* is clear – there should be one final responsible person in respect of seafarers' employment, the shipowner, and the SEA shall contain information on this person. The only question that remains is who of all persons and entities involved in seafarers' recruitment and employment process can actually hold the status of shipowner under the MLC. The answer to this question depends on national legislators implementing the MLC concept of *shipowner* nationally.

## 2.7. EU acquis and the MLC

The European Commission takes part in the work of international organizations, including in the ILO. The collaboration between the EU and the ILO has varied over the past 60 or so years and ILO's thinking on formal, decent work and other aspects of labour relations have been important elements in the evolution of EU thought regarding the, so-called, social pillar.<sup>246</sup>

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<sup>244</sup> Standard A2.1, paragraph 1 (a), MLC:

1. Each Member shall adopt laws or regulations requiring that ships that fly its flag comply with the following requirements:

(a) seafarers working on ships that fly its flag shall have a seafarers' employment agreement signed by both the seafarer and the shipowner or a representative of the shipowner (or, where they are not employees, evidence of contractual or similar arrangements) providing them with decent working and living conditions on board the ship as required by this Convention;

<sup>245</sup> ILO publication: FAQ on the MLC, *supra* note 240, p. 38.

<sup>246</sup> F. Pastore, S. Gausas, I. Styczynska, et al., “EU and ILO: Shaping the Future of Work”, Study for the Committee on Employment and Social Affairs, Policy Department for Economic, Scientific and Quality of Life Policies, European Parliament, Luxembourg, 2019, p. 109. Available at: <http://www.europarl.europa.eu/supporting-analyses> Last visited in March 2020.

The legal basis for EU competence on maritime labour issues is Title X of the Treaty on the Functioning of the European Union (TFEU)<sup>247</sup> on Social Policy. In the field of social policy, the EU shall support and complement the activities of the Member States listed in Article 153, paragraph 1 of TFEU:

- (a) improvement in particular of the working environment to protect workers' health and safety;*
- (b) working conditions;*
- (c) social security and social protection of workers;*
- (d) protection of workers where their employment contract is terminated;*
- (e) the information and consultation of workers;*
- (f) representation and collective defence of the interests of workers and employers, including co-determination, subject to paragraph 5;*
- (g) conditions of employment for third-country nationals legally residing in Union territory;*
- (h) the integration of persons excluded from the labour market, without prejudice to Article 166;*
- (i) equality between men and women with regard to labour market opportunities and treatment at work;*
- (j) the combating of social exclusion;*
- (k) the modernisation of social protection systems without prejudice to point (c).*

In the fields referred to in paragraph 1(a) to (i) of Article 153 of the TFEU, the European Parliament and the Council may adopt, by means of directives, minimum requirements for gradual implementation of EU policies and activities, having regard to the conditions and technical rules adhered to in each of the Member States.<sup>248</sup>

Under Article 4 (2) (b) of the TFEU social policy is an area of shared competence between the EU and Member States. That means that the Member States shall exercise their competence to the extent that the EU has not exercised, or has decided to cease exercising, its competence.

EU competence in respect of employment policy is regulated by Article 5 (2) of the TFEU which states:

- 2. The Union shall take measures to ensure coordination of the employment policies of the Member States, in particular by defining guidelines for these policies.*

The detailed regulation in respect of employment policy is given in Title IX of TFEU, where the role of the EU is limited to encouraging cooperation and by supporting and, if necessary,

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<sup>247</sup> Treaty on the Functioning of the European Union (TFEU). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12012E%2FTXT> Last visited in March 2020.

<sup>248</sup> Article 153 (2) (b), TFEU.

complementing the action of Member States.<sup>249</sup> The main competences conferred by Title IX are for the Council to draw up guidelines which the Member States shall take into account in their employment policies,<sup>250</sup> and to adopt incentive measures designed to encourage cooperation between Member States and to support their action in the field of employment.<sup>251</sup> The measures envisaged by these competences may best be described as ‘soft law’ measures, whose purpose is to influence policy rather than to tie Member States to binding and enforceable standards.<sup>252</sup>

The regulatory role that the EU plays in maritime transport matters dates well back in the past and is based on seeking mechanisms to ensure the effectiveness of IMO international regulations in order to reinforce international regulations within the ever more effective community code.

Under Article 1 (2) of the Constitution of the ILO, the Members of the ILO shall be the States; additionally, only the delegates of the ILO Member States have voting rights in the meetings of the General Conference of representatives of the Members.<sup>253</sup> The ILO Constitution, in particular Article 19 (5) of the ILO Constitution, makes it clear that only ILO Member States may ratify an ILO convention. This means that only EU Member States can ratify ILO conventions and perform other duties placed on the Member States according to the ILO Constitution, not the EU. However, the EU has actively participated in meetings leading to the adoption of the MLC as well as in the meetings discussing adoption of the amendments of the MLC.

The EU supports the MLC and its objective of levelling the playing field while becoming a global legal instrument that will constitute the “fourth pillar” of the IMO regulatory regime for quality shipping. Therefore, it has transposed large parts of the MLC into EU legislation.<sup>254</sup>

In order to be a part of the EU *acquis*, the MLC shall be implemented in EU legal acts adopted in accordance with EU legislative procedure. Accordingly, after adoption of the MLC on 7 June 2007 the Council Decision was adopted authorising Member States to ratify, in the interests

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<sup>249</sup> Article 147 (1), TFEU.

<sup>250</sup> Article 148 (2), TFEU.

<sup>251</sup> Article 149, TFEU.

<sup>252</sup> *Analysis – in the light of the European Union acquis – of the ILO Conventions that have been classified by the International Labour organization as up to date*, European Commission Directorate-General for Employment, Social Affairs and Inclusion Unit A.4, Luxembourg: Publications Office of the European Union, 2014, p. 18-19. Available at: [file:///E:/Phd/Chapter%20II\\_int%20law/EU%20on%20EU%20and%20ILO.pdf](file:///E:/Phd/Chapter%20II_int%20law/EU%20on%20EU%20and%20ILO.pdf) Last visited in March 2020.

<sup>253</sup> Article 4, ILO Constitution. Available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62\\_LIST\\_ENTRIE\\_ID:2453907:NO](https://www.ilo.org/dyn/normlex/en/f?p=1000:62:0::NO:62:P62_LIST_ENTRIE_ID:2453907:NO) Last visited in March 2020.

<sup>254</sup> See [https://ec.europa.eu/transport/modes/maritime/international\\_en](https://ec.europa.eu/transport/modes/maritime/international_en)

of the European Community, the MLC.<sup>255</sup> Having regard to the Treaty establishing the European Community and, in particular Article 42 in conjunction with the first sentence of the first subparagraph of Article 300 (2) and the first subparagraph of Article 300 (3), thereof, to the aim of achieving the establishment of a level playing field in the maritime industry, taking into account that some provisions of the MLC fall within the Community's exclusive competence as regards the coordination of social security schemes, Article 1 of the Council Decision 2007/431/EC stated:

*Member States are hereby authorised to ratify, for the parts falling under Community competence, the Maritime Labour Convention, 2006, of the International Labour organization, adopted on 7 February 2006.*

According to the Council Decision 2007/431/EC, Member States should have ratified the MLC as soon as possible, preferably before 31 December 2010.<sup>256</sup> Some Member States like Spain, Bulgaria, Luxembourg, Denmark, Latvia and the Netherlands had already ratified it some years before.

Different parts of the MLC have been inserted into different EU instruments regarding flag State and port State obligations.

### **2.7.1. Directive 2009/13/EC**

The main EU legal instrument in respect of the implementation of the MLC within the EU is Directive 2009/13/EC,<sup>257</sup> which by amending Directive 1999/63/EC<sup>258</sup> implements the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006 ('the

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<sup>255</sup> 2007/431/EC: Council Decision of 7 June 2007 authorising Member States to ratify, in the interests of the European Community, the Maritime Labour Convention, 2006, of the International Labour organization. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32007D0431> Last visited in March 2020.

<sup>256</sup> Article 2, 2007/431/EC: Council Decision of 7 June 2007, *ibid.*

<sup>257</sup> Council Directive 2009/13/EC of 16 February 2009 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) on the Maritime Labour Convention, 2006, and amending Directive 1999/63/EC. Available at: <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:124:0030:0050:EN:PDF> Last visited in March 2020.

<sup>258</sup> Council Directive 1999/63/EC of 21 June 1999 concerning the Agreement on the organization of working time of seafarers concluded by the European Community Shipowners' Association (ECSA) and the Federation of Transport Workers' Unions in the European Union (FST) - Annex: European Agreement on the organization of working time of seafarers. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31999L0063> Last visited in March 2020.

Agreement'), annexed thereto. Clause 2, point (d) of the amended Directive contains the following definition of "shipowner":

*(d) the term "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 Agreement, regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.'*

This definition as well as the definition contained in Article 1 (f) of the annexed Agreement of the social partners is identical to the definition of "shipowner" in the MLC. The same can be said about other relevant provisions in respect of the signing of the SEA – they are identical with provisions contained in the MLC. For any terms used in the Agreement and which are not specifically defined, therein, this Directive leaves Member States free to define them in accordance with national law and practice, as is the case for other social policy directives using similar terms, provided that those definitions respect the content of the Agreement.<sup>259</sup> This Directive entered into force on the date of entry into force of the MLC.<sup>260</sup>

### **2.7.2. Directive 2013/38/EU**

In order to ensure a harmonised approach to the effective enforcement of international standards contained in the MLC when performing port State control inspections by Member States, Directive 2013/38/EU<sup>261</sup> was adopted on 12 August 2013 amending Directive 2009/16/EC<sup>262</sup> on port State control. By Directive 2013/38/EU, the MLC was included among the Conventions the implementation of which are verified by port State inspectors.<sup>263</sup>

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<sup>259</sup> Paragraph 10, Preamble, Council Directive 2009/13/EC, *supra* note 257.

<sup>260</sup> Article 7, Council Directive 2009/13/EC, *supra* note 257.

<sup>261</sup> Directive 2013/38/EU of the European Parliament and of the Council of 12 August 2013 amending Directive 2009/16/EC on port State control. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0038> Last visited in March 2020.

<sup>262</sup> Directive 2009/16/EC of the European Parliament and of the Council of 23 April 2009 on port State control. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A32009L0016> Last visited in March 2020.

<sup>263</sup> Paragraph 11, Preamble, Directive 2013/38/EU, *supra* note 261.

Directive 2009/16/EC was amended to reflect the provisions set out in the MLC with regard to the status of MLC documents<sup>264</sup> regarding the procedures of the handling of: onshore complaints relating to the matters dealt with in MLC;<sup>265</sup> the detention of a ship in the case of living and working conditions on board which are clearly hazardous to the safety, health or security of seafarers; or deficiencies which constitute a serious or repeated breach of MLC requirements.<sup>266</sup> Directive 2013/38/EU entered into force eight days after its adoption on 20 August 2013, the date of entry into force of the MLC<sup>267</sup>.

In respect of the use of terms, Directive 2009/16/EC refers to an owner's and a shipowner's duties and rights in specific cases<sup>268</sup> but the responsibility for maintenance of the condition of the ship and its equipment after survey to comply with the requirements of conventions applicable to the ship lies with the ship company.<sup>269</sup> Directive 2009/16/EC defines a 'company' as follows:

*'Company' means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for operation of the ship from the owner of the ship and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the International Safety Management (ISM) Code.*<sup>270</sup>

The ISM Code is implemented within the EU through Regulation (EC) No 336/2006 of the European Parliament and of the Council of 15 February 2006 on the implementation of the International Safety Management Code within the Community and repealing Council Regulation (EC) No 3051/95.<sup>271</sup> The tragedy of ferry *Estonia* led the EU to speed up enforcement of the ISM

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<sup>264</sup> Paragraph 12, Preamble, Directive 2013/38/EU, *supra* note 261:

*Member States, when performing port State control inspections in accordance with Directive 2009/16/EC, should take into account the provisions of MLC 2006 which stipulate that the maritime labour certificate and the declaration of maritime labour compliance are to be accepted as prima facie evidence of compliance with the requirements of MLC 2006.*

Article 1 (18), 1 (19), 1 (20) of the Directive 2013/38/EU.

<sup>265</sup> Preamble (11), Article 1 (1), Article 1 (9), Directive 2013/38/EU, *supra* note 261.

<sup>266</sup> Article 1 (10), Directive 2013/38/EU, *supra* note 261. By Article 1 (18), 1 (19), 1 (20) of the Directive 2013/38/EU Annexes IV, V and X of the Directive 2009/16/EC were amended to make a reference to relevant documents and criteria of the MLC.

<sup>267</sup> Article 3, Directive 2013/38/EU, *supra* note 261.

<sup>268</sup> See, for example, Article 19, paragraph 8; Article 21, paragraph 4; Article 28, Directive 2009/16/EU, *supra* note 262.

<sup>269</sup> Preamble (6), Directive 2009/16/EU, *supra* note 262.

<sup>270</sup> Article 2 (18), Directive 2009/16/EC, *supra* note 262.

<sup>271</sup> Regulation (EC) No 336/2006 of the European Parliament and of the Council of 15 February 2006 on the implementation of the International Safety Management Code within the Community and repealing Council

Code<sup>272</sup> within the EU through Regulation (EC) No 336/2006. Regulation 336/2006 contains a definition of “company” which is in line with the one in the ISM Code:

*(3) ‘company’ means the owner of the ship or any other organization or person, such as the manager or the bareboat charterer, who has assumed responsibility for the operation of the ship from the shipowner and who, on assuming such responsibility, has agreed to take over all the duties and responsibilities imposed by the ISM Code;*<sup>273</sup>

Annex I of Regulation 336/2006 contains the ISM Code.

The Preamble of Directive 2013/38/EU states that a reference to ‘company’ in Directive 2009/16/EC in respect of matters covered by the MLC should be understood to mean ‘shipowner’ as defined by the relevant provision of the MLC since the latter definition better fits the specific needs of the MLC:<sup>274</sup>

*For any matters covered by this Directive relating to the enforcement of MLC 2006, including for ships for which the International Safety Management Code is not applicable, references in Directive 2009/16/EC to ‘company’ should be understood to mean ‘shipowner’ as defined by the relevant provision of MLC 2006, since the latter definition better fits the specific needs of MLC 2006.*

Accordingly, EU regulation on PSC recognizes the ISM Company as the person having the MLC shipowners’s responsibilities.

### **2.7.3. Directive 2013/54/EU**

To ensure that Member States effectively carry out their obligations as flag States with respect to the implementation of the relevant parts of MLC, the Directive 2013/54/EU of the European Parliament and of the Council of 20 November 2013 concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention, 2006,<sup>275</sup>

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Regulation (EC) No 3051/95. <https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2006:064:0001:0036:EN:PDF> Last visited in March 2020.

<sup>272</sup> Ph. Boisson, *supra* note 112, p. 297.

<sup>273</sup> Article 2 (3), Regulation 336/2006, *supra* note 271.

<sup>274</sup> Preamble (7), Directive 2013/38/EU, *supra* note 261.

<sup>275</sup> Directive 2013/54/EU of the European Parliament and of the Council of 20 November 2013 concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention, 2006. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0054> Last visited in March 2020.

was adopted. The aim of this Directive is to introduce certain compliance and enforcement provisions, envisaged in Title 5 of the MLC, which relate to those parts of the MLC in respect of which the required compliance and enforcement provisions have not yet been adopted.<sup>276</sup> According to Article 7 (1) of the Directive 2013/54/EU, Member States should have brought into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 March 2015.<sup>277</sup> Directive 2013/54/EU does not contain provisions requiring specific analysis for the purpose of this research.

#### **2.7.4. Directive (EU) 2015/1794**

Directive (EU) 2015/1794 of the European Parliament and of the Council of 6 October 2015 amending Directives 2008/94/EC, 2009/38/EC and 2002/14/EC of the European Parliament and of the Council; and also, Council Directives 98/59/EC and 2001/23/EC, as regards seafarers,<sup>278</sup> shall be mentioned. With reference to the MLC,<sup>279</sup> the EU aims to improve the working conditions of seafarers and their access to information and consultation that may be better achieved at the EU level, etc. In this regard, EU Directive 2015/1794 amended several directives (Directives 2008/94/EC, 2009/38/EC and 2002/14/EC of the European Parliament and of the Council and Council Directives 98/59/EC and 2001/23/EC) to make them applicable, also, to seafarers.

Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer<sup>280</sup> applies to employee's claims arising from contracts of employment or employment relationships as well as existing claims against employers who are in a state of insolvency in one of the Member States. According to this Directive, the Member States shall take the measures necessary to ensure that institution guarantee, subject to Article 4, payment of employees' outstanding claims resulting

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<sup>276</sup> Paragraph 8, Preamble, Directive 2013/54/EU, *supra* note 275.

<sup>277</sup> Article 7, Directive 2013/54/EU, *supra* note 275.

<sup>278</sup> Directive (EU) 2015/1794 of the European Parliament and of the Council of 6 October 2015 amending Directives 2008/94/EC, 2009/38/EC and 2002/14/EC of the European Parliament and of the Council, and Council Directives 98/59/EC and 2001/23/EC, as regards seafarers. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32015L1794> Last visited in March 2020.

<sup>279</sup> Paragraph 14, Preamble, Directive (EU) 2015/1794, *ibid*.

<sup>280</sup> Directive 2008/94/EC of the European Parliament and of the Council of 22 October 2008 on the protection of employees in the event of the insolvency of their employer. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02008L0094-20151009> Last visited in March 2020.

from contracts of employment or employment relationships, including, where provided for by national law, severance pay on termination of employment relationships.<sup>281</sup>

Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees<sup>282</sup> was amended by Directive (EU) 2015/1794 to delete the article excluding merchant navy crews from its applicability<sup>283</sup> and in Article 10(3) the new subparagraphs were added:

*A member of a special negotiating body or of a European Works Council, or such a member's alternate, who is a member of the crew of a seagoing vessel, shall be entitled to participate in a meeting of the special negotiating body or of the European Works Council, or in any other meeting under any procedures established pursuant to Article 6(3), where that member or alternate is not at sea or in a port in a country other than that in which the shipping company is domiciled, when the meeting takes place.*

*Meetings shall, where practicable, be scheduled to facilitate the participation of members or alternates, who are members of the crews of seagoing vessels.*

*In cases where a member of a special negotiating body or of a European Works Council, or such a member's alternate, who is a member of the crew of a seagoing vessel, is unable to attend a meeting, the possibility of using, where possible, new information and communication technologies shall be considered.*

Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community - Joint declaration of the European Parliament, the Council and the Commission on employee representation<sup>284</sup> was amended by Directive (EU) 2015/1794 in order to delete Article 3(3) of Directive 2002/14/EC containing Member's rights to derogate from this Directive through particular provisions applicable to the crews of vessels flying the high seas.<sup>285</sup> Article 2 (c) of the Directive 2002/14/EC contains the following definition of "employer":

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<sup>281</sup> Article 3, Directive 2008/94/EC, *ibid*.

<sup>282</sup> Directive 2009/38/EC of the European Parliament and of the Council of 6 May 2009 on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02009L0038-20151009> Last visited in March 2020.

<sup>283</sup> Article 2 (1), Directive (EU) 2015/1794, *supra* note 278.

<sup>284</sup> Directive 2002/14/EC of the European Parliament and of the Council of 11 March 2002 establishing a general framework for informing and consulting employees in the European Community - Joint declaration of the European Parliament, the Council and the Commission on employee representation. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32002L0014> Last visited in March 2020.

<sup>285</sup> Article 3, Directive (EU) 2015/1794, *supra* note 278.

*"employer" means the natural or legal person party to employment contracts or employment relationships with employees, in accordance with national law and practice;*

Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies<sup>286</sup> was amended by Directive (EU) 2015/1794 in order to delete the exclusion in respect of the crew of seagoing vessels from the applicability of the Council Directive 98/59/EC.<sup>287</sup> Additionally in Article 3(1) of the Council Directive 98/59/EC the new subparagraph in respect of seafarers was inserted:

*Where the projected collective redundancy concerns members of the crew of a seagoing vessel, the employer shall notify the competent authority of the State of the flag which the vessel flies.<sup>288</sup>*

Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses, or parts of undertakings or businesses<sup>289</sup> was amended by Directive (EU) 2015/1794 to make it applicable also to seagoing vessels, where before such application was excluded from the scope of Directive 2001/23/EC. Accordingly, Article 1(3) of Directive 2001/23/EC was replaced by the following:

*3. This Directive shall apply to a transfer of a seagoing vessel that is part of a transfer of an undertaking, business or part of an undertaking or business within the meaning of paragraphs 1 and 2, provided that the transferee<sup>290</sup> is situated, or the transferred undertaking, business, or part of an undertaking or business remains, within the territorial scope of the Treaty.*

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<sup>286</sup> Council Directive 98/59/EC of 20 July 1998 on the approximation of the laws of the Member States relating to collective redundancies. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31998L0059> Last visited in March 2020.

<sup>287</sup> Article 4, Directive (EU) 2015/1794, *supra* note 278.

<sup>288</sup> Article 4, Directive (EU) 2015/1794, *supra* note 278.

<sup>289</sup> Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32001L0023>. Last visited in March 2020.

<sup>290</sup> Article 2, Directive 2001/23/EC, *ibid*:

*1. For the purposes of this Directive:*

*(a) 'transferor' shall mean any natural or legal person who, by reason of a transfer within the meaning of Article 1(1), ceases to be the employer in respect of the undertaking, business or part of the undertaking or business;*

*(b) 'transferee' shall mean any natural or legal person who, by reason of a transfer within the meaning of Article 1(1), becomes the employer in respect of the undertaking, business or part of the undertaking or business;*

*This Directive shall not apply where the object of the transfer consists exclusively of one or more seagoing vessels.*<sup>291</sup>

In summary, neither Directive 2015/1794/EU nor the Directives amended by it contain the relevant provisions in respect of the purpose of the research. Initially, these Directives aimed to establish regulation for all employees with exemption of seafarers. Until the amendments to the Directives are formally applicable to seafarers, however, the provisions of the amended Directives shall not reflect the specific character of employment in shipping.

#### **2.7.5. Directive (EU) 2018/131**

Following the MLC amendments of 2014, another Directive was adopted – Council Directive (EU) 2018/131 of 23 January 2018 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to amend Directive 2009/13/EC in accordance with the amendments of 2014 to the Maritime Labour Convention, 2006, as approved by the International Labour Conference on 11 June 2014.<sup>292</sup> By Directive 2018/131/EU, the Annex to Directive 2009/13/EC, 2014, is amended to copy the text of the MLC amendments 2014.

#### **2.7.6. Directive (EU) 2019/1152**

Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union<sup>293</sup> lays down minimum rights that apply to every worker in the EU who has an employment contract or employment relationship as defined by the law, collective agreements or practice in force in each Member State with consideration to the case-law of the Court of Justice.<sup>294</sup> Directive (EU) 2019/1152 repeals

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<sup>291</sup> Article 5, Directive (EU) 2015/1794, *supra* note 278.

<sup>292</sup> Council Directive (EU) 2018/131 of 23 January 2018 implementing the Agreement concluded by the European Community Shipowners' Associations (ECSA) and the European Transport Workers' Federation (ETF) to amend Directive 2009/13/EC in accordance with the amendments of 2014 to the Maritime Labour Convention, 2006, as approved by the International Labour Conference on 11 June 2014. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX%3A32018L0131> Last visited in March 2020.

<sup>293</sup> Directive (EU) 2019/1152 of the European Parliament and of the Council of 20 June 2019 on transparent and predictable working conditions in the European Union. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32019L1152> Last visited in March 2020.

<sup>294</sup> Article 1, paragraph 2, Directive (EU) 2019/1152, *ibid*.

Directive Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship<sup>295</sup> with effect from 1 August 2022<sup>296</sup> when Member States shall take the necessary measures to comply with Directive (EU) 2019/1152.<sup>297</sup> Based on paragraph 2 of Article 1 of the Council Directive 91/533/EEC, seafarers could be excluded from the scope of this Directive:

2. *Member States may provide that this Directive shall not apply to employees having a contract or employment relationship:*

- (a) *- with a total duration not exceeding one month, and/or*  
*- with a working week not exceeding eight hours; or*
- (b) *of a casual and/or specific nature provided, in these cases, that its non-application is justified by objective considerations.*

Directive (EU) 2019/1152 also explicitly incorporates seafarers under its scope, however, with some exemptions. Given the specificities of the employment conditions of seafarers and sea fishermen, the following requirements of Directive (EU) 2019/1152 should not apply to seafarers or sea fishermen:

- 1) parallel employment where incompatible with the work performed on board ships or fishing vessels;
- 2) minimum predictability of work;
- 3) the sending of workers to another Member State or to a third country;
- 4) transition to another form of employment;
- 5) providing information on the identity of the social security institutions receiving social contributions.<sup>298</sup>

Therefore, paragraph 8 of Article 1 clarifies that Chapter II of the proposed Directive will apply without prejudice to these directives:

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<sup>295</sup> Council Directive 91/533/EEC of 14 October 1991 on an employer's obligation to inform employees of the conditions applicable to the contract or employment relationship. Available at: <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX%3A31991L0533> Last visited in March 2020.

<sup>296</sup> Article 24, Directive (EU) 2019/1152, *supra* note 293.

<sup>297</sup> Article 21, paragraph 1, Directive (EU) 2019/1152, *supra* note 293.

<sup>298</sup> Paragraph 10, Preamble, Directive (EU) 2019/1152, *supra* note 293.

*Chapter II of this Directive applies to seafarers and sea fishermen without prejudice to Directives 2009/13/EC and Directive (EU) 2017/159, respectively. The obligations set out in points (m) and (o) of Article 4(2), and Articles 7, 9, 10 and 12 shall not apply to seafarers or sea fishermen.*

Under Article 4, paragraph 2 (applicable also to seafarers' employment) of Directive (EU) 2019/1152, an employer is required to inform workers of the essential aspects of employment, including on the identities of the parties to the employment relationship.<sup>299</sup>

Furthermore, Directive (EU) 2019/1152 recognises the situation, which is typical in shipping, when several persons have functions and responsibilities of the employer by paragraph 13 of the Preamble:

*(13) Several different natural or legal persons or other entities may in practice assume the functions and responsibilities of an employer. Member States should remain free to determine more precisely the persons who are considered to be wholly or partly responsible for the execution of the obligations that this Directive lays down for employers, as long as all those obligations are fulfilled. Member States should also be able to decide that some or all of those obligations are to be assigned to a natural or legal person who is not party to the employment relationship.*

Accordingly, Article 1, paragraph 5 of EU Directive 2019/1152 states:

*5. Member States may determine which persons are responsible for the execution of the obligations for employers laid down by this Directive as long as all those obligations are fulfilled. They may also decide that all or part of those obligations are to be assigned to a natural or legal person who is not party to the employment relationship.(...)*

From the legal provisions above it follows that a Member State has the right not to establish a regulation under Directive (EU) 2019/1152 if obligations are assigned to several persons. If national law assigns all or part of obligations to the person who is not party to the employment relationship then the identity of such person should also be included in the employment agreement to ensure that employees are informed about the responsible person. But Directive (EU) 2019/1152 does not require such. The conclusion may be drawn that Directive (EU) 2019/1152, like the MLC, addresses the situation of several persons responsible for employer's obligation in very general

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<sup>299</sup> Article 4, paragraph 1 and 2, Directive (EU) 2019/1152, *supra* note 293:

1. Member States shall ensure that employers are required to inform workers of the essential aspects of the employment relationship.

2. The information referred to in paragraph 1 shall include at least the following:

(a) the identities of the parties to the employment relationship;(...)

terms. As such, it may be observed that national legislators have broad authority in respect of the correct implementation of these terms nationally.

As stated by the European Commission, these inclusions give seafarers the same rights as employees on-shore and, furthermore, this leads to an enhancement of their living and working conditions, thus, increasing the attractiveness of working in the maritime sector, in particular for young people.<sup>300</sup> However, without taking into account the practical problems in respect of seafarers' employment, this declaration as well as the relevant legal regulation is very formal.

The conclusion which may be made here is that the EU legislation in respect of the MLC does not contain new aspects for analysis in respect of the research question since EU regulation mostly copies the MLC text. In this case it cannot be said that EU regulation provides for greater protection for seafarers than the ILO instrument – the MLC.

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<sup>300</sup> See [https://ec.europa.eu/transport/modes/maritime/seafarers/employment\\_en](https://ec.europa.eu/transport/modes/maritime/seafarers/employment_en)

### III Implementation of the MLC at national level

#### 3.1. Introduction

Where national statutes are required for the implementation of the international convention, it can be said that the intentions of the drafters in the international forum have been imputed to the legislators of the domestic statute.<sup>301</sup> The success of any international convention very much depends on the national legislators – do national legislators implement fully the intentions of the drafters on the international forum? It is not an easy task because the legal concepts are intrinsically bound up with the national legal systems and principles on which they are formulated; additionally, as well as being socio-culturally determined, they are subject to moral values and traditions of the country concerned at a particular point of time.<sup>302</sup>

According to Mukherjee there are two dimensions to the notion of giving effect to a convention domestically. “The first is implementation which involves making the treaty a part of the national legal domain; the other is enforcement. (...) There are two aspects to the enforcement of the implemented treaty. There is the practical aspect which essentially involves technically oriented activities such as surveys and certification under conventions such as SOLAS and MARPOL, and policing activities typified by such activities as surveillance, monitoring, inspections and the like under those same conventions. The other aspect involves administrative or judicial enforcement through appropriate sanctions in the event of a violation of the implemented convention law.”<sup>303</sup> At any rate, not much can be gained from legal instruments whether of international or national legislative character unless they are properly implemented and enforced.<sup>304</sup>

On the role and significance of the work of national legislators, we may also draw conclusions from Article I of the MLC, containing the general obligations of the Members. The general obligation of each Member who ratifies the MLC is to give complete effect to the MLC; in doing so, implementing its provisions through its laws and regulations or other measures, in order to secure the right of all seafarers to decent employment.<sup>305</sup> As pointed out by Moira L.

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<sup>301</sup> Pr. K. Mukherjee, *supra* note 63, p. 135.

<sup>302</sup> G. Tessuto, *supra* note 88, p. 286.

<sup>303</sup> Pr. K. Mukherjee, M. Brownrigg, *supra* note 2, 178.

<sup>304</sup> Pr. K. Mukherjee, M. Brownrigg, *supra* note 2, p. 195.

<sup>305</sup> Article 1, paragraph 1; Article 6, MLC.

McConnell, the flag State as the responsible actor under UNCLOS, and particularly under the MLC for this globalized workforce, is increasingly the central, perhaps the only point of certainty in an industry with multijurisdictional, mobile, often short-term workers, employers and workplaces.<sup>306</sup>

One of the main difficulties for the implementation is that the MLC is both a labour convention and a maritime convention. Interaction with the ILO, including implementation of labour conventions, is usually a matter dealt with by the labour and welfare departments or ministries in each country. However, the compliance and enforcement approach in the MLC is one contained in the wider maritime regime. On the other hand, many of the topics such as social security, or occupational safety and health, and the possibility of implementation through collective bargaining agreements are not within the usual practice or jurisdiction of most maritime administrations.<sup>307</sup>

On the basis of the so-called ILO law principle “substantial equivalence”, the MLC grants the possibility to Members to implement a binding standard in a manner other than stipulated in the Convention:

*Where the competent authority determines that it would not be reasonable or practicable at the present time to apply certain details of the Code referred to in Article VI, paragraph 1, to a ship or particular categories of ships flying the flag of the Member, the relevant provisions of the Code shall not apply to the extent that the subject matter is dealt with differently by national laws or regulations or collective bargaining agreements or other measures. Such a determination may only be made in consultation with the shipowners’ and seafarers’ organizations concerned and may only be made with respect to ships of less than 200 gross tonnage not engaged in international voyages.<sup>308</sup>*

According to Article VI, paragraph 4 of the MLC, substantial equivalence can be considered:

*(...) any law, regulation, collective agreement or other implementing measure shall be considered to be substantially equivalent, in the context of this Convention, if the Member satisfies itself that:*

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<sup>306</sup> M. L. McConnell, “A delicate balance: The seafarers’ employment agreement, the system of the Maritime Labour Convention, 2006 and the role of flag States”, in P. Chaumette, *Seafarers: an international labour market in perspective*, Gomylex, 2016. Available at: [file:///E:/Phd/Literatura/Seafarers\\_intern\\_labour\\_market\\_HUMAN-SEA\\_Book-1.pdf](file:///E:/Phd/Literatura/Seafarers_intern_labour_market_HUMAN-SEA_Book-1.pdf) Last visited in March 2020.

<sup>307</sup> M. L. McConnell, “The Maritime Labour Convention, 2006—reflections on challenges for flag State implementation”, *WMU Journal of Maritime Affairs*, Number 127 (2011). Available at: <https://link.springer.com/article/10.1007/s13437-011-0012-z> Last visited in March 2020.

<sup>308</sup> Article II, paragraph 6, MLC.

(a) it is conducive to the full achievement of the general object and purpose of the provision or provisions of Part A of the Code concerned; and

(b) it gives effect to the provision or provisions of Part A of the Code concerned.

Substantial equivalence is one area for flexibility in the implementation of the MLC. The second area “...of flexibility in implementation is provided by formulating the mandatory requirements of many provisions in Part A in a more general way, thus leaving a wider scope for discretion as to the precise action to be provided for at the national level.”<sup>309</sup> Accordingly, the more general formulation is under the MLC provision, while a more precise implementation of this provision should be carried out nationally.

The purpose of this Chapter is to consider the implementation of relevant provisions of the MLC into national law. The research is focused on several issues relevant for the purpose of the thesis.

First, it will be researched who can be considered the shipowner in respect of seafarers’ employment under national law of a particular country. The concept of *shipowner* is one of the key concepts of the MLC; because, the shipowner is the main person who has duties and obligations imposed by the MLC. However, as so many persons and organizations are involved in the employment of seafarers, as well as so many signatories to the SEA present in current shipping practice, it is not easy to establish who is the responsible shipowner.

Therefore, the question is: Does national law clearly state who is the final responsible person in respect of seafarers’ claims and requests for compensation? It was concluded in the previous Chapter, Chapter II, that the intention of the international forum of the MLC drafters in respect of the definition of “shipowner” was to state that there should be one final responsible person, regardless of how many other organizations or persons are involved in seafarers’ employment and performing some duties on behalf of the shipowner. However, it is not reflected expressly in the text of the MLC. Therefore, it was also concluded in Chapter II that the term “shipowner” and the definition of this term in the MLC is ambiguous; specifically, the intention of the international forum in respect of the concept of *shipowner* is not possible to establish only from the wording of the term and definition in the MLC text. It is presented in this Chapter whether the true intention of the international forum is taken into account in the implementation of the concept of *shipowner* nationally.

If there is one person with final responsibility defined under national law, the next question is does national law ensure that the seafarer has information about this person. Among various

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<sup>309</sup> Paragraph 9, Explanatory note to the Regulations and Code of the Maritime Labour Convention, MLC.

other rights of seafarers, those pertaining to a reasonable quality of life on board include also rights to have a written SEA signed by the shipowner or its representative, containing clear information about a responsible contractual party, which affects: the possibility to receive due assistance, the claims resolving process, and the defence of seafarers' rights.

The most important document relating to a seafarer's life and work is an employment contract, the SEA (also called articles).<sup>310</sup> Some form of employment agreement for seafarers was already required in accordance with Convention No. 22. However, since the adoption of the MLC, the attention and concern regarding the implementation of this requirement have increased.<sup>311</sup> The MLC explicitly requires that seafarers working on ships shall have a written SEA containing the relevant information, including information about the shipowner:

*(...) Standard A2.1 - Seafarers' employment agreements*

*1. Each Member shall adopt laws or regulations requiring that ships that fly its flag comply with the following requirements:*

*(a) seafarers working on ships that fly its flag shall have a seafarers' employment agreement signed by both the seafarer and the shipowner or a representative of the shipowner (or, where they are not employees, evidence of contractual or similar arrangements) providing them with decent working and living conditions on board the ship as required by this Convention;*

*(b) seafarers signing a seafarers' employment agreement shall be given an opportunity to examine and seek advice on the agreement before signing, as well as such other facilities as are necessary to ensure that they have freely entered into an agreement with a sufficient understanding of their rights and responsibilities;*

*(...) 4. Each Member shall adopt laws and regulations specifying the matters that are to be included in all seafarers' employment agreements governed by its national law. Seafarers' employment agreements shall in all cases contain the following particulars:*

*(a) the seafarer's full name, date of birth or age, and birthplace;*

*(b) the shipowner's name and address;(...)*

CEACR<sup>312</sup> has also stressed the importance of the basic legal relationship that the MLC establishes between the seafarer and the person defined as the "shipowner" under Article II, paragraph 1 (j) of the MLC; and that, in accordance with paragraph 1 of Standard A2.1 of the MLC, every seafarer must have an original agreement that is signed by the seafarer and the

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<sup>310</sup> D. B. Stevenson, "Maritime Labour Law", in the *IMLI manual on international maritime law*, Volume II: Shipping Law, Oxford, Oxford University press, 2016, p. 216.

<sup>311</sup> M. L. McConnell, *supra* note 306, p. 123.

<sup>312</sup> See General Observation (CEACR) - adopted 2014, published 104th ILC session (2015). CEACR comment to Regulation 2.1 and the Code. Seafarers' employment agreements. Available at: <http://www.ilo.org/dyn/normlex/en/f?p=1000:20010:::NO:::> Last visited in March 2020.

shipowner, or a representative of the latter (whether or not the shipowner is considered to be the employer of the seafarer).

Accordingly, the question: Does national law ensure that the information about a responsible person – the shipowner, is inserted into the SEA and available to the seafarer, especially in the case when a third person acts as employer.

### 3.2. Denmark

Denmark has a long-standing maritime tradition and the shipping industry is one of the most flourishing sectors of the national economy.<sup>313</sup> Denmark ranks 13<sup>th</sup> in respect of the ownership of the world's fleet, 12<sup>th</sup> among the top shipowning countries, as of the 1st of January 2019, and ranks 14<sup>th</sup> (Danish International Ship Register) in leading flags of registration by dead-weight tonnage.<sup>314</sup>

The MLC entered into force on 20 August 2013 in Denmark. The relevant legal acts in Denmark are the Act on seafarers' conditions of employment, etc. (Act no. 73)<sup>315</sup> and Order no. 238 of 7 March 2013 on the Employer's obligation to conclude a written contract with the seafarer on the conditions of employment (Order no. 238).<sup>316</sup> As well, the standard form of SEA completed by the Danish Maritime Authority (DMA)<sup>317</sup> and the guidelines from the DMA, *The Seaman's*

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<sup>313</sup> Information on ILO website [https://www.ilo.org/global/standards/maritime-labour-convention/WCMS\\_158495/lang--en/index.htm](https://www.ilo.org/global/standards/maritime-labour-convention/WCMS_158495/lang--en/index.htm) Last visited in March 2020.

<sup>314</sup> UNCTAD Review of maritime transport 2019, *supra* note 36, table 2.6. (For the purposes of table 2.6. Ownership of world fleet ranked by dead-weight tonnage, 2019, second and international registries are recorded as foreign or international registries, whereby, for example, ships belonging to owners in the United Kingdom registered in Gibraltar or the Isle of Man are recorded as being under a foreign or international flag. In addition, ships belonging to owners in Denmark and registered in the Danish International Ship Register account for 43.7 per cent of the Denmark-owned fleet in dead-weight tonnage, and ships belonging to owners in Norway registered in the Norwegian International Ship Register account for 26.6 per cent of the Norway-owned fleet in dead-weight tonnage), 2.7., and 2.8.

<sup>315</sup> Consolidated act on seafarers' conditions of employment, etc. (Consolidated act no. 73 of 17 March 2014 issued by the DMA). Available at: <http://www.dma.dk/SoefarendeBemanding/AnsaettelsesforholdMLC/Ansaettelsesforhold/Sider/ReglerAnsaettelsesforhold.aspx> Last visited in March 2020.

<sup>316</sup> Order on the employer's obligation to conclude a written contract with the seafarer on the conditions of employment (Order no. 238 of 7 March 2013 issued by the DMA). Available at: <http://www.dma.dk/SoefarendeBemanding/AnsaettelsesforholdMLC/Ansaettelsesforhold/Sider/ReglerAnsaettelsesforhold.aspx> Last visited in March 2020.

<sup>317</sup> Standard form of the Employment agreement between seafarer and Owner/Master, completed by DMA, 2013. Available at: <https://www.soefartsstyrelsen.dk/Documents/Blanketter/hyrekontrakt.pdf> Last visited in March 2020.

*Rights and Duties, 2008*- in its current version from 2008,<sup>318</sup> are considered below. The guidelines are not mandatory and, according to the DMA, currently, the guidelines are being updated.<sup>319</sup>

### ***Term and definition***

Danish law uses the term “shipowner” and the term “employer” with respect to the person responsible for the employment of seafarers. The term “employer” is used to refer to the person who shall, prior to commencing service, conclude a written employment contract with the employee.<sup>320</sup> Danish law does not contain a definition of “shipowner”.<sup>321</sup>

The DMA in its guidelines from 2008 explains the term “shipowner” in the following:

*Ship owner. See under "Shipping Company".*

*Shipping company means the seaman's employer. The person or the company responsible for the manning of the ship or the ships.*<sup>322</sup>

It may be assumed from the above-cited text (in the non-mandatory document) that usually the ISM Company will be considered the responsible shipowner in respect of employed seafarers.

### ***Who is the shipowner – the person with final responsibility?***

Section 1a of Act no. 73 should be cited as relevant to this question (author’s underling):

***Section 1a.*** *The shipowner shall ensure that the provisions of this act and regulations issued pursuant to this act, including regulations on the conditions of employment, are complied with. The shipowner shall also ensure that the seafarer’s rights according to the employment contract are complied with. The shipowner shall also ensure that the master has a possibility of complying with the obligations that rest with him. The obligations pursuant to the first-third sentences shall rest with the shipowner irrespective of whether other organizations, companies or persons perform some of these tasks or obligations on behalf of the shipowner.*

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<sup>318</sup> The Seaman's Rights and Duties, DMA, 2008, p. 15. Available at: [http://www.dma.dk/SoefarendeBemanding/Documents/pligt\\_og\\_ret\\_pjece\\_sept09.pdf](http://www.dma.dk/SoefarendeBemanding/Documents/pligt_og_ret_pjece_sept09.pdf) Last visited in March 2020.

<sup>319</sup> See information on DMA website: <https://www.dma.dk/SoefarendeBemanding/AnsaettelsesforholdMLC/Ansaettelsesforhold/Sider/default.aspx> Last visited in March 2020.

<sup>320</sup> Section 2, Order no. 238, *supra* note 316.

<sup>321</sup> Act no. 73 and Order no. 238, *supra* note 316.

<sup>322</sup> The Seaman's Rights and Duties, *supra* note 318, p. 15.

**Subsection 2.** *Subsection 1 shall apply through another person than the shipowner is the employer. In such cases, the obligations according to the employment contract, cf. section 3, and the provisions of the act regulating the conditions of employment shall also rest with the employer.*

**Subsection 3.** *If the shipowner has fully or partly left his obligations and areas of responsibility pursuant to this act or the employment contract to another person or organization, subsection 1 shall also apply to the relevant persons or organization insofar as regards the obligations and areas of responsibility assumed.*

Additionally, Act no. 73 in Section 64 contains the following provision in respect of disputes concerning the employment and the consideration of complaints on board:

*A seafarer has a right to complain to the shipowner about the account of wages, the ship service, the conditions of employment or the conditions on board. The shipowner has an obligation to ensure that complaints are sufficiently examined and to develop and implement procedures on board for a just, efficient and fast consideration of complaints. The Minister for Business and Growth may lay down more detailed regulations on complaints, etc.<sup>323</sup>*

It can be assumed from the provision cited above that the shipowner remains the person with final responsibility; as it follows from the last sentence of Section 1a of Act no. 73, which states that the obligations pursuant to the first-third sentences (cited above) shall rest with the shipowner irrespective of whether other organizations, companies or persons perform some of these tasks or obligations on behalf of the shipowner.

### ***Does a seafarer have information about the responsible employer?***

In Denmark, a written SEA shall be concluded by the shipowner, the employer, or the one acting on behalf of the shipowner or the employer.<sup>324</sup> Section 3 (1) of Act No.73 states:

*Section 3. The Minister for Business and Growth may lay down provisions stipulating the shipowner's or employer's duty to conclude a written agreement with the employee, among these provisions stipulating the terms of engagement and the shipowner's or employer's duty to inform the employee of the conditions of the agreement and of the working conditions. The form and contents of the agreements shall be stipulated after consultation with the Ships Inspection Council.*

Section 2 (1) of Order No.238 states:

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<sup>323</sup> Section 64, Act no. 73, *supra* note 315.

<sup>324</sup> Section 3 (1), etc., Act no. 73, *supra* note 315; Section 2 (1), Order no. 238, *supra* note 316.

*Section 2. The shipowner or the employer or the one acting on behalf of the shipowner or the employer shall, prior to commencing service, conclude a written employment contract with the employee.*

According to Order No. 238, the employee shall be furnished with a copy of the SEA signed by the employer and the contract shall include information about the name and address of the employer.<sup>325</sup> A publication by the DMA from 2008 informs that both the seaman and the shipping company/master must sign the SEA and it must contain the identity of the shipowner.<sup>326</sup> The standard form of the SEA<sup>327</sup> is drawn up: to include information about the employer or shipowner; to be signed by the owner or employer; to also be signed by the master who has to sign on his own and who may, as well, sign on behalf of the owner or employer. It follows that the SEA shall contain information on the shipowner or employer but not about both in cases where the other person, who is not a shipowner, is acting as an employer. Accordingly, the seafarer may have no information about the shipowner as the person with final responsibility in cases where another person other than the shipowner is acting as the employer.

In this respect CEACR has stressed that since the SEA's standard form provides that it can be between the seafarer and: a shipowner, master, or an employer, it is not clear from the legislation that the shipowner may remain responsible for all matters under the SEA.<sup>328</sup> CEACR has noted that the Danish SEA standard form is not in line with the MLC since it distinguishes between the shipowner and employer. The Danish Government replied to the CEACR that in their view "it is not a requirement under the MLC or in Danish laws and regulations, that the shipowner must be the employer...." the CEACR recalled that:

*Regulation 2.1 and the Code do not require that the shipowner must also be the employer, however it does require that every seafarer has an original agreement that is signed in accordance with paragraph 1 of Standard A2.1, which provides that a seafarer's employment agreement must be signed by the seafarer and the shipowner, or a representative of the shipowner. It appears under section 1(a) of the Consolidated act on seafarers' conditions of employment, etc. and other instruments a shipowner may remain responsible for all matters under a seafarers' employment agreement, even if a seafarer has a different employer. However, this is not clear in the legislation. The Committee also notes the standard form agreement provided by the Government which provides alternatively that the agreement can be between the seafarer and a shipowner*

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<sup>325</sup> Section 2 (2), Order No. 238, *supra* note 316.

<sup>326</sup> The Seaman's Rights and Duties, *supra* note 318, p. 3.

<sup>327</sup> Standard form of the Employment agreement between seafarer and Owner/Master, *supra* note 317.

<sup>328</sup> See Direct Request (CEACR) - adopted 2014, published 104th ILC session (2015). Maritime Labour Convention, 2006 (MLC, 2006, 2006) - Denmark (Ratification: 2011). CEACR comment on Regulation 2.1. and the Code. Seafarers' employment agreements, *supra* note 165.

*or a master or an employer. The Committee notes that this agreement creates uncertainty as to who is the responsible party. The Committee recalls that, irrespective of the employment arrangements involved, the seafarer is required to have an agreement signed by both the seafarer and the shipowner or a representative of the shipowner.* <sup>329</sup>

Finally, CEACR requested Denmark to clarify who are the parties under the Danish law on the seafarers' employment agreement and to consider amending the standard form agreement to ensure that seafarers have an original agreement signed by both the seafarer and shipowner or a shipowner's representative, as required under paragraph 1 of Standard A2.1.<sup>330</sup>

The answer of Denmark contains the following:

*In its reply, the Government indicates that the parties to a SEA are the seafarer and the shipowner/employer or a representative. It further indicates that section 2, subsection 2 of Order No. 238 of 7 March 2013 provides that the employee shall be provided with a copy of the employment contract signed by the employer. Even though the provision does not determine that the seafarer shall be furnished with a copy signed by both the employer and employee, there is nothing preventing the seafarer to sign the copy of the employment contract signed by the employer. The Government further states that for the situations where the employer is not the shipowner, section 1(a) of the Consolidated Act on the seafarers' conditions of employment, etc. (No. 73 of 25 January 2014), provides that the obligations rest with the shipowner irrespective of whether other organizations, companies or persons perform some of these tasks or obligations on behalf of the shipowner.*<sup>331</sup>

CEACR was not satisfied with such an answer and required Denmark to ensure full compliance with the MLC provisions (i.e., ensure that the SEA is signed by the seafarer and the shipowner):

*While noting this information, the Committee observes that the existing legislation is not fully in compliance with the Convention as it does not require the shipowner to sign the SEA. The Committee stresses the importance of the basic legal relationship that the Convention establishes between the seafarer and the person defined as "shipowner" under Article II. It recalls that, in accordance with Standard A2.1, paragraph 1, every seafarer must have an original agreement that is signed by the seafarer and the shipowner or a representative of the latter (whether or not the shipowner is considered to be the employer of the*

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<sup>329</sup> *Ibid.*

<sup>330</sup> *Supra* note 328.

<sup>331</sup> See Direct Request (CEACR) - adopted 2019, published 109th ILC session (2020). Maritime Labour Convention, 2006 (MLC, 2006, 2006) - Denmark (Ratification: 2011). CEACR comment on Regulation 2.1. and the Code. Seafarers' employment agreements, *supra* note 165.

*seafarer). The Committee therefore requests the Government to indicate the measures taken or envisaged to ensure full compliance with this provision of the Convention.*<sup>332</sup>

### **3.3. Estonia**

On 5 May 2016, Estonia, as the 74th Member State, deposited with the ILO the instrument of ratification of the MLC. The MLC entered into force for Estonia on 5 May 2017, that is, one year after its ratification. The Estonian merchant fleet consisted of 70 ships in 2015, with a total gross tonnage of 345,000 tonnes. In 2014, Estonian ports handled 43.6 million tonnes of goods, of which 65 per cent were liquid bulk goods.<sup>333</sup>

The Maritime Safety Act<sup>334</sup> and Seafarers' Employment Act,<sup>335</sup> as acts implementing the MLC requirements in respect of SEA's in Estonia, will be considered below. Additionally, the Employments' Contract Act,<sup>336</sup> which applies to all employment relationships, is considered below.

#### ***Term and definition***

The term "shipowner" is used neither in the Seafarers' Employment Act nor in the Maritime Safety Act. Instead the term "operator" is used to refer to the person who employs the seafarer and who assumes all obligations and rights in employment relationships.

Section 3 of the Seafarers' Employment Act states:

#### ***§ 3. Seafarer's employment contract***

*Seafarer's employment contract is an employment contract on the basis of which a natural person (hereinafter crew member) works for another person (hereinafter operator), subject to the management and control of the operator. The operator shall remunerate the crew member for the work.*

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<sup>332</sup> *Ibid.*

<sup>333</sup> See information on ILO website [https://www.ilo.org/global/standards/maritime-labour-convention/news/WCMS\\_488807/lang--en/index.htm](https://www.ilo.org/global/standards/maritime-labour-convention/news/WCMS_488807/lang--en/index.htm) Last visited in March 2020.

<sup>334</sup> Maritime Safety Act, passed 12 December 2001., entered into force 1 January 2003. Available at: <https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/515012020002/consolide> Last visited in March 2020.

<sup>335</sup> Seafarers Employment Act, passed 11 June 2014., entered into force 1 July 2014. Available at: <https://www.riigiteataja.ee/en/eli/ee/505092017001/consolide> Last visited in March 2020.

<sup>336</sup> Employments Contract Act, passed 17 December 2008., entered into force 1 July 2009. Available at: <https://www.riigiteataja.ee/en/eli/ee/Riigikogu/act/509052019005/consolide> Last visited in March 2020.

According to the Seafarers' Employment Act the operator is defined as:

*For the purposes of this Act, an operator is a person specified in the Maritime Safety Act or another person who assumes in an employment relationship the rights, obligations and liability of the employer by entering into a seafarer's employment contract.<sup>337</sup>*

According to Section 2, paragraph 9) of the Maritime Safety Act, an operator is defined as follows:

*9) "operator" means a person who is in possession of a ship and uses it in the operator's own name and has been entered in the respective register of ships. An operator is also a person who has taken over the obligations and liability for managing the maritime safety and technical service of a ship from the owner of the ship under a contract pursuant to the International Management Code for the Safe Operation of Ships and for Pollution Prevention (hereinafter ISM Code) established on the basis of the International Convention for the Safety of Life at Sea;*

Accordingly, the term "operator" in Estonian maritime labour law covers:

- 1) owner of the ship (first sentence of the Section 2, paragraph 9) of the Maritime Safety Act, cited above),
- 2) ISM Company (first sentence of the Section 2, paragraph 9) of the Maritime Safety Act, cited above),
- 3) or another person who assumes in an employment relationship the rights, obligations and liability of the employer by entering into a seafarer's employment contract (Section 5, Seafarers Employment Act, cited above).

***Who is the shipowner – the person with final responsibility?***

Estonian maritime labour law consistently states that the final responsible person in respect of seafarers' employment is the operator. The operator shall be the one who will conclude the SEA. The operator is responsible for all obligations traditionally attributed to the shipowner – to ensure food supply and regular catering,<sup>338</sup> to guarantee the accommodation,<sup>339</sup> to ensure safe and healthy

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<sup>337</sup> Section 5, Seafarers Employment Act, *supra* note 335.

<sup>338</sup> Section 28, Seafarers Employment Act, *supra* note 335.

<sup>339</sup> Section 29, Seafarers Employment Act, *supra* note 335.

working environment,<sup>340</sup> the provision of medical care for crew members,<sup>341</sup> and repatriation,<sup>342</sup> etc.<sup>343</sup>

The term “operator” covers a very wide circle of persons. The operator can be not only the owner of the ship (the traditional party to the SEA) or ISM Company (certified provider of the management of maritime safety and technical service under the ISM Code) but, also, another person who assumes in an employment relationship the rights, obligations and liability of the employer by entering into a seafarer’s employment contract. There are no explicit provisions stating who will be the ultimate responsible person when all mentioned persons are present in a seafarer’s employment, as usually is the case in shipping.

### ***Does a seafarer have information about the responsible employer?***

The information to be inserted in the SEA is prescribed by the Employment Contracts Act and the Seafarers’ Employment Act. Section 5 (1) of the Employment Contracts Act specifies information to be inserted in any employment contract.<sup>344</sup> In respect of the employer, the following

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<sup>340</sup> Section 30, Seafarers Employment Act, *supra* note 335.

<sup>341</sup> Section 32, Seafarers Employment Act, *supra* note 335.

<sup>342</sup> Section 55- 59, Seafarers Employment Act, *supra* note 335.

<sup>343</sup> For example, see Section 22 of the Seafarers Employment Act, *supra* note 335:

#### ***§ 22. Obligations of operators***

*In addition to that provided for in § 28 of the Employment Contracts Act, an operator is required, above all, to:*

- 1) ensure that the master of a ship has the means necessary for the performance of obligations prescribed by law, a collective agreement or a seafarer’s employment contract;*
- 2) ensure safe working and living conditions and compliance with health protection requirements on board ships;*
- 3) introduce to the crew members upon their employment and during working the fire safety, occupational safety, occupational health, and environmental protection requirements as well as the rules of organization of work established by the operator on board the ship;*
- 4) ensure at the operator’s own cost that the crew members have the work clothing, special protective clothing and habiliments as well as the personal protective equipment necessary for the performance of work;*
- 5) provide the crew members with information about last month’s wages which have been calculated and paid or which are subject to payment, including information about the currency exchange rate if necessary, unless agreed otherwise;*
- 6) perform other obligations prescribed by law, a collective agreement or a seafarer’s employment contract.*

<sup>344</sup> Section 5 (1) of the Employment Contracts Act, *supra* note 336:

#### ***§ 5. Notification of employee of working conditions***

*(1) A written document of an employment contract shall contain at least the following data:*

- 1) the name, personal identification code or registry code, place of residence or seat of the employer and the employee;*
- 2) the date of entry into the employment contract and commencement of work by the employee;*
- 3) a description of duties;*
- 4) the official title if this brings about a legal consequence;*

information should be inserted into employment agreements: the name, personal identification code or registry code, and the place of residence or seat of the employer. Section 9 of the Seafarers' Employment Act requires additional information to be inserted in the SEA:

*In addition to that provided for in § 5 of the Employment Contracts Act, a written document of a seafarer's employment contract shall include at least the following information:*

- 1) *the place of birth of the crew member;*
- 2) *the place where the crew member shall commence work;*
- 3) *the ship or ships where work shall be commenced and the ship's registration number;*
- 4) *a reference to the health and social security guarantees offered by the operator, including to the benefits in connection with work-related illnesses or injuries or death caused by an occupational accident;*
- 5) *a reference to the organization of repatriation of the crew member;*
- 6) *a reference to the conditions of and the procedure for the cancellation of the seafarer's employment contract, including to the terms of advance notice of the cancellation of the seafarer's employment contract.*

The CEACR Committee in respect of content of the SEA under Estonian regulation noted:

*(...) that the Government refers to paragraph 5 of the ECA and paragraph 9 of the SEA, which contain many, but not all, of the matters listed in Standard A2.1, paragraph 4. The Committee observes that the points included in Standard A2.1, paragraph 4(a), (c), (f) and (g), are missing. **The Committee accordingly requests the Government to indicate how it ensures that the content of seafarer's employment agreements fully complies with the Convention.***<sup>345</sup>

For purposes of the research, it is important to mention that the Estonian law does not require adding information to the SEA on the contractual, or similar arrangements, between the owner and third person which signs the SEA, as required by Standard A.2.1, 1 (a) of the MLC.

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*5) the agreed remuneration payable for the work (wages), including remuneration payable based on the economic performance and transactions, and the manner of calculation, the procedure for payment and the time of falling due of wages (pay day), also taxes and payments payable and withheld by the employer;*

*6) other benefits if agreed upon;*

*7) the time when the employee performs the agreed duties (working time);*

*8) the place of performance of work;*

*9) the duration of holiday;*

*10) a reference to the terms for advance notice of cancellation of the employment contract or the terms for advance notice of cancellation of the employment contract;*

*11) a reference to the rules of work organization established by the employer;*

*[RT I, 10.02.2012, 1 – entry into force 20.02.2012]*

*12) a reference to a collective agreement if a collective agreement is applicable with regard to the employee.*

<sup>345</sup> See Direct Request (CEACR) - adopted 2019, published 109th ILC session (2020). Maritime Labour Convention, 2006 (MLC, 2006) - Estonia (Ratification: 2016). CEACR note in respect of Regulation 2.1 and Standard A2.1, paragraph 4. Seafarers' employment agreements, *supra* note 165.

The explanation in respect of the implementation of Standard A2.1, paragraph 1(a) and (c) of the MLC was also required by CEACR:

*The Committee notes the information provided by the Government in relation to the data to be included in the employment contracts as well as the minimum particulars of the seafarer's employment agreement. Noting the absence of information regarding the requirements of Standard A2.1, paragraph 1(a) and (c), the Committee requests the Government to indicate how it ensures that seafarers have a seafarers' employment agreement signed by both the seafarer and the shipowner or a representative of the shipowner and that the seafarer has an original SEA signed by both the shipowner and the seafarer.*<sup>346</sup>

Estonia is asked to reply in full to the present comments by 2022.<sup>347</sup>

### **3.4. Finland**

On 9 January 2013, the Government of Finland deposited with the ILO the instrument of ratification of the MLC. At that moment Finland had under its flag vessels totalling 1.5 million gross tons representing 0.15 per cent of the world tonnage of ships. Finland does not rank in the leading flags of registration by tonnage or among states having a big share of ownership of the world's fleet. Nonetheless, the port of Helsinki is among the busiest ports in the Baltic Sea with the value of its cargo traffic standing approximately one-third of all Finnish foreign trade.<sup>348</sup>

The MLC has been in force in Finland since 9 January 2014. As the legal acts implementing the MLC in Finland the Seafarers' Employment Contracts Act (Act no. 756/2011),<sup>349</sup> the Act on the Working and Living Environment and Catering for Seafarers on Board Ships (Act no. 395/2012),<sup>350</sup> and the Act on the Technical Safety and Safe Operation of Ships (Act no.

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<sup>346</sup> *Ibid.*

<sup>347</sup> *Supra* note 344.

<sup>348</sup> See information on ILO website [https://www.ilo.org/global/standards/maritime-labour-convention/WCMS\\_201251/lang--en/index.htm](https://www.ilo.org/global/standards/maritime-labour-convention/WCMS_201251/lang--en/index.htm)

<sup>349</sup> Seafarers' Employment Contracts Act (756/2011) (756/2011; amendments up to 608/2018 included). Available at: <https://www.finlex.fi/en/laki/kaannokset/> Last visited in March 2020.

<sup>350</sup> Act on the Working and Living Environment and Catering for Seafarers on Board Ships (No. 395/2012), adopted on 15 June 2012. Available at: <https://www.finlex.fi/en/laki/kaannokset/> Last visited in March 2020.

1686/2009)<sup>351</sup> are considered below. As well, the Seaman's contract of employment provided by the Ministry of Economic Affairs and Employment of Finland<sup>352</sup> is considered.

### ***Term and definition***

Act no. 756/2011 does not use the term “shipowner” at all. A term “shipping company” is used only once – to address specific obligations of a shipping company towards seafarers employed with said company (see Section 17 cited below in respect of seafarers' repatriation). Mainly the term “employer” is used in describing contractual relations in respect of employment on board a Finnish ship.

The term “shipowner” is defined in Act no. 395/2012. Section 4 of Act no. 395/2012 states that for the purposes of this act:

*shipowner means the owner of a ship or the charterer of an entire ship or another natural or legal person who alone or together with other persons exercises effective control on board a ship.*

This referenced definition of “shipowner” is broader than the one contained in the MLC. The person who exercises effective control on board a ship is a very ambiguous indication to the responsible person. This definition does not require for the shipowner to take responsibility for seafarers' employment.

### ***Who is the shipowner – the person with final responsibility?***

In Finland, the general principle of the employer's liability is expressed by Chapter 12, Section 1 of Act no. 756/2011:

*If the employer intentionally or through negligence commits a breach against obligations arising from the employment relationship or this Act, it shall be liable for the loss thus caused to the employee.*

Under Chapter 1 Section 9 of Act no. 756/2001, the employer may assign another person to direct and supervise work as the employer's representative. In such a case, if, in the exercise of

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<sup>351</sup> Act on the Technical Safety and Safe Operation of Ships (Act no. 1686/2009). Available at: <https://www.finlex.fi/en/laki/kaannokset/> Last visited in March 2020.

<sup>352</sup> Seaman's contract of employment provided by the Ministry of Economic Affairs and Employment of Finland. Available at: <https://tem.fi/en/legislation-on-seafaring> Last visited in March 2020.

these functions, such representative causes a loss to the employee through fault or negligence, the employer shall be liable for the loss.<sup>353</sup>

In addition to the employer's responsibility, the responsibility of the shipping company is emphasised in specific cases under Section 17 of Act no. 756/2001:

*Even in circumstances where the employee is employed by someone else other than the shipping company, the shipping company shall, in addition to the employer, be responsible for the employee's free homeward journeys, the employee's belongings left on board the ship and the employee's health care and burial.*

*The shipping company shall take out insurance and maintain its validity or set in place other financial security for the purpose of ensuring payment of homeward journey costs and care and burial costs under section 13 a of employees referred to in subsection 1.<sup>354</sup>*

Accordingly, Finish law explicitly appoints the shipping company as the person with the final responsibility in respect of specific responsibilities,<sup>355</sup> only, but not in respect of all claims seafarers may have. Who can be the employer – the final responsible person, is not specified in Finish law.

### ***Does a seafarer have information about the responsible employer?***

According to Chapter 1, Section 3 of Act no. 756/2011, the SEA shall be in writing and shall contain specific information, including the name, address, and domicile or business location of the employer. There is no requirement to include information on the shipping company or the shipowner in the case where the employer is a person other than the shipowner. Therefore, a seafarer may lack information on the shipowner in that case.

Also, a Finnish seamen's contract of employment form requires inserting only the name and address, be it a domicile or business address, of the employer.<sup>356</sup> Accordingly, the seafarer will not have information in his SEA on the real owner of the ship nor of who is the responsible employer if the responsibility for employment is assigned to another person.

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<sup>353</sup> Chapter 1 Section 9, Act no. 756/2001, *supra* note 348.

<sup>354</sup> Chapter 13 Section 17, Act no.756/2011, *supra* note 348.

<sup>355</sup> Chapter 13, Section 17, Act no. 756/2011, *supra* note 348.

<sup>356</sup> Seaman's contract of employment form, *supra* note 351.

The last source from where to get information about the responsible shipowner is the MLC certificate which should be held on board the ship. The Finnish Transport Safety Agency (Trafi) issues MLC certificates.<sup>357</sup> Trafi has, in collaboration with the Finnish Shipowners' Association, drawn up a form in Part II of the DMLC which the shipowner may: edit to suit his particular needs, sign, and send it to Trafi for verification.<sup>358</sup> The DMLC – Part II contains reference to the definition of “shipowner” contained in the MLC.<sup>359</sup> However, it does not give clarity on who can be considered the final responsible person in respect of seafarers’ employment on Finnish ships.

It should be mentioned that CEACR, so far, have not had any comment in respect of the regulation of the above-mentioned issues in Finnish legislation.<sup>360</sup>

### 3.5. Germany

In 2019, Germany was ranked 6<sup>th</sup> among the 35 countries having ownership of the world’s fleet, 7<sup>th</sup> among the top shipowning countries in the world, and 27<sup>th</sup> among the leading flags of registration by a tonnage of 91.33 per cent of its total (dwt) under foreign flag.<sup>361</sup> The port of Hamburg is the third largest seaport in Europe and the world’s 14th largest container port, the second largest European container port; Hamburg Port is a major transportation and logistics hub for Northern Europe which provides access through its waterways to the European hinterland and plays a major role in the region’s economy, with more than 40,000 people employed directly in and around the port.<sup>362</sup>

The MLC has been in force in Germany since 20 August 2013. In Germany, the core legislation for the implementation of the MLC is the Maritime Labour Act,<sup>363</sup> which replaced the

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<sup>357</sup> Section 57 (3), Act no. 1686/2009, *supra* note 351.

<sup>358</sup> See information on Trafi website [https://www.trafi.fi/en/maritime/maritime\\_labour\\_convention\\_2006/prerequisites\\_for\\_issuance\\_of\\_mlc](https://www.trafi.fi/en/maritime/maritime_labour_convention_2006/prerequisites_for_issuance_of_mlc) Last visited in March 2020.

<sup>359</sup> Declaration of Maritime Labour Compliance – Part II. Available at: [https://www.trafi.fi/filebank/a/.../12896-DMLC\\_II\\_MU6114e.dot](https://www.trafi.fi/filebank/a/.../12896-DMLC_II_MU6114e.dot) Last visited in March 2020.

<sup>360</sup> Direct Request (CEACR) - adopted 2016, published 106th ILC session (2017). Maritime Labour Convention, 2006 (MLC, 2006) - Finland (Ratification: 2013), *supra* note 165.

<sup>361</sup> Table 2.6, 2.7. and 2.8., UNCTAD Review of maritime transport 2019, *supra* note 36.

<sup>362</sup> See information on ILO website [https://www.ilo.org/global/standards/information-resources-and-publications/news/WCMS\\_219886/lang--en/index.htm](https://www.ilo.org/global/standards/information-resources-and-publications/news/WCMS_219886/lang--en/index.htm) Last visited in March 2020.

<sup>363</sup> The Maritime Labour Act (*Seearbeitsgesetz*) 21 February 2013. Version 2014-12-10. Available at: <http://www.deutsche-flagge.de/en/applications-and-documents/documents> Last visited in March 2020.

former Seamen's Act adopted in 1957; additionally, the Model employment agreement for ships flying the German flag,<sup>364</sup> and the Guidelines on the implementation of the Maritime Labour Convention on board German flagged ships (MLC, 2006 – Guideline. Revision 3/2013) published by the Ship Safety Division of German Social Accident Insurance Institution for Commercial Transport, Postal Logistics and Telecommunication (BG Verkehr)<sup>365</sup> are all considered below.

### ***Term and definition***

The Maritime Labour Act defines the term “shipowner” in an almost identical wording to the one contained in the MLC:

1. *the owner of the ship, or*
2. *any other organization or person having assumed the responsibility for the operation of the ship from the owner of the ship and having undertaken, on assuming this responsibility in the contract with the owner, to carry out the tasks and obligations which are imposed on the shipowner in accordance with the present Act and with the other legal provisions for the implementation of the Maritime Labour Convention.*<sup>366</sup>

The term “employer” is also used in the German Maritime Labour Act to refer to the person responsible for seafarers' employment other than the shipowner.<sup>367</sup>

### ***Who is the shipowner – the person with final responsibility?***

Section 4 of the Maritime Labour Law provides a definition of “shipowner” as well as the main principles of responsibility of the shipowner. The definition of “shipowner” is stated in Section 4 (1) of the Maritime Labour Act, which is cited above.

Section 4 (2) of the Maritime Labour Act states:

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<sup>364</sup> Model for a crew member's employment agreement for ships flying the German flag (Stand 17. April 2013). Available at: <http://www.deutsche-flagge.de/en/applications-and-documents/documents> Last visited in March 2020.

<sup>365</sup> Guidelines on the implementation of the Maritime Labour Convention on board of German flagged ships (MLC, 2006 – Guideline) published by Ship Safety Division of BG for transport and traffic (Dienststelle Schiffssicherheit of the BG Verkehr). Revision 3/2013. Available at: <http://www.deutsche-flagge.de/en/applications-and-documents/documents> Last visited in March 2020.

<sup>366</sup> Section 4 (1), Maritime Labour Act, *supra* note 363.

<sup>367</sup> See Section 4, 29 (1), 33 (2) etc., Maritime Labour Act, *supra* note 363.

*(2) The shipowner shall be responsible for adherence to the rights and obligations in accordance with the present Act and with the other legal provisions for the implementation of the Maritime Labour Convention.*

*This shall also apply if*

- 1. another organization or person performs specific tasks and obligations on behalf of the shipowner, or*
- 2. another organization or person is the employer or trainer of a crew member (other employer).*

It follows that German law clearly states that the shipowner shall stay responsible for adherence to the rights and obligations in respect of employment of seafarers even if another organization or person performs specific tasks and obligations on behalf of the shipowner or acting as the employer. Moreover, the shipowner shall ensure the performance of his/her responsibility by way of a contract concluded with an employer stating that another employer performs the tasks and obligations incumbent upon him towards the crew members:

*(3) Independently of the responsibility of the shipowner in accordance with subs. 2, the other employer shall also be responsible for adherence to the rights and obligations of the shipowner in accordance with the present Act and with the other legal provisions for the implementation of the Maritime Labour Convention. The shipowner shall ensure the performance of his/her responsibility in accordance with subs. 2 by way of a contract concluded with the other employer stating that the other employer performs the tasks and obligations incumbent on him/her towards the crew member in accordance with sentence 1.<sup>368</sup>*

According to Section 4 (2) of the Maritime Labour Act cited above, a shipowner shall be responsible also in the case when the other employer shall also be responsible for adherence to the rights and obligations of the shipowner in accordance with the Maritime Labour Act and with the other legal provisions for the implementation of the MLC.<sup>369</sup>

Additionally, Section 4 (4) of the Maritime Labour Act requires the shipowner to be liable for payment obligations of another employer:

*(4) The shipowner shall also be liable for payment obligations of the other employer resulting from the engagement or the vocational training relationship; the provisions on the guarantor who has waived benefit of execution shall apply in this respect. The liability of the shipowner for the obligation to pay wages or remuneration shall cover the customary remuneration unless a derogating claim emerges from a copy of the seafarers' employment agreement or the vocational training contract signed by the shipowner.*

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<sup>368</sup> Section 4 (3), Maritime Labour Act, *supra* note 363.

<sup>369</sup> Section 4 (3), Maritime Labour Act, *supra* note 363.

It can be concluded that it is stated very clearly by German law that the person with the final responsibility is the shipowner irrespective of other independent organizations also acting as the employers. Additionally, considering Section 4 (1) of the Maritime Labour Act, the shipowner can be an owner of a ship, a bareboat charterer or an ISM Company.

***Does a seafarer have information about the responsible employer?***

German law requires that upon the first application for the issue of a MLC certificate and the DMLC, and in the case of any changes, the competent authority has to be notified about the responsible ship owner. If the primary responsible person for seafarers' employment will be a person or organization other than the owner, that person has to submit a Declaration of shipowner's responsibility<sup>370</sup>, by which, declaring that the person:

*has assumed as shipowner the responsibility for the operation of the following ship and, on assuming such responsibility, has agreed to fulfil the duties and responsibilities imposed on the shipowner in accordance with the German Maritime Labour Act and other legal provisions implementing the Maritime Labour Convention.*

When commencing service on a German ship, every crew member has to have a written SEA which establishes the engagement between the shipowner and the crew member.<sup>371</sup> The SEA shall include the full name and address of the shipowner; and in the case of another employer: the full name and address of the employer and of the shipowner.<sup>372</sup> If the SEA has been concluded with another employer, the shipowner still has to sign the SEA to acknowledge his obligations according to public law<sup>373</sup> and the employer has to be able to demonstrate to the seafarer that:

*(1) (...) One copy of each individual seafarer's employment agreement shall be carried on board. If the seafarer's employment agreement has been concluded with another employer, an original copy shall be kept on board, on which the shipowner has confirmed, by signing, his responsibility in accordance with section 4*

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<sup>370</sup> MLC, 2006 – Guideline, *supra* note 365, p. 6, 9 and Annex 1 of a model of the Declaration of shipowner's responsibility, *supra* note 364.

<sup>371</sup> Section 28 (1), Maritime Labour Act, *supra* note 363.

<sup>372</sup> Section 28 (2) (1), Maritime Labour Act, *supra* note 363.

<sup>373</sup> MLC – Guideline, *supra* note 365, p. 29.

*subs. 2. The crew member shall be entitled to take insight into the copy of his/her seafarer's employment agreement at any time.*<sup>374</sup>

The name and address of the shipowner and in the case of another employer both the name and address of the employer and of the shipowner shall also be included in the record of employment.<sup>375</sup>

Comments on the Model employment agreement for ships flying German flag<sup>376</sup> state that in the case that the SEA is not concluded directly with the shipowner, but with another employer, it's recommended to insert not only information about an employer as the contracting party but also about a shipowner.

It can be concluded that the concept of *shipowner* under the MLC is fully implemented in German law, providing precise and clear legal regulation that there is one final responsible person in respect of seafarers' employment; furthermore, and that which is very important, German regulation ensures that the flag state, itself, and also the seafarer is informed about who is that one final responsible person.

### **3.6. Latvia**

In terms of ownership of the world's fleet, Latvia is not a relevant country; having 5,774 masters and officers holding valid certificates of competency, it ranks 12<sup>th</sup> among EU Member States; and with 4,998 ratings holding valid certificates of proficiency the country ranks 4<sup>th</sup> among EU Member States.<sup>377</sup>

The MLC has been applicable in Latvia since 20 August 2013. The legal provisions relevant for this research are contained mainly in the Maritime Code,<sup>378</sup> which was amended to ensure the implementation of the MLC nationally.

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<sup>374</sup> Section 29 (1), Maritime Labour Act, *supra* note 363.

<sup>375</sup> Section 33 (2) (2), Maritime Labour Act, *supra* note 363.

<sup>376</sup> Model for crew member's employment agreement, *supra* note 364, p. 4.

<sup>377</sup> Figure 2-1, Figure 2-51. Seafarers' Statistics in the EU. Statistical review (2016 data STCW-IS). Issued by EMSA, 18 July 2018. Available at: <http://emsa.europa.eu/infographics/item/3322-seafarer-statistics-in-the-eu-2016.html> Last visited in March 2020.

<sup>378</sup> Maritime Code. Available at: <http://vvc.gov.lv/index.php?route=product/search> Last visited in March 2020.

### ***Term and definition***

Under Section 272 (2) 3) of 3) of the Maritime Code, a shipowner is a:

*a) registered shipowner,*

*b) bareboat charterer or other natural or legal person who has assumed the responsibility for the operation of the ship (for example, ship operator), including responsibility for compliance with the requirements of MLC Convention on board the MLC Convention ship or responsibility for the compliance with the requirements set out in respect of a seafarer's employment legal relations on board the ship, other than MLC Convention ship;*

Since Part G *Seafarers* of the Maritime Code applies also to fishing vessels, the afore-cited definition also addresses ships, to which the MLC does not apply. The mentioned definition is similar to the definition of “shipowner” contained in the MLC but not identical. The definition in the Latvian Maritime Code is missing the phrase “*regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner*”, which is contained in the MLC definition and of which the purpose is to indicate that there should be one final responsible person.

#### ***Who is the shipowner – the person with final responsibility?***

From the definition of “shipowner”, cited above, it follows that not only an owner and bareboat charterer but also an ISM Company can be recognized as a shipowner.

#### ***Does a seafarer have information about the responsible employer?***

According to Section 286 (1) 3) of the Maritime Code, the SEA shall contain the shipowner's name and address. Yet, as it can be concluded from the definition of “shipowner”, the shipowner can also be an ISM Company. In the case where the SEA is signed by a third party acting on behalf of the shipowner, Latvian law does not require the insertion of the information on or enclosed evidence for the SEA on the legal basis that the third person is representing the shipowner.

### 3.7. Norway

As of 2019, Norway ranked 8<sup>th</sup> among countries having ownership of the world's fleet (97.2. per cent foreign flag) and 5<sup>th</sup> among the top shipowning countries. Norwegian International Ship Register is 15<sup>th</sup> among the leading flags of registration by dead-weight tonnage.<sup>379</sup>

The MLC came into force in Norway on 20 August 2013. At the level of acts of law, the MLC is implemented in Norway mainly through amendments to Chapter 4 of the Ship Safety and Security Act<sup>380</sup> and, the Act No. 102 relating to employment protection (etc.) for employees on board ships (The Ship Labour Act)<sup>381</sup> which came into force 20 August, 2013.<sup>382</sup> As well Regulations No. 1000 on employment agreement and pay statement, etc.<sup>383</sup> (Regulations No. 1000) and the Employment agreement form approved by the Norwegian Maritime Authority (NMA) are all considered below.<sup>384</sup>

#### *Term and definition*

In Norway there is a long tradition, both in everyday language and in legislation, of referring to a person who operates a ship as a “reder”. If a company operates a ship, it is referred

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<sup>379</sup> UNCTAD Review of maritime transport 2019, *supra* note 36. table 2.6. (For the purposes of table 2.6. Ownership of world fleet ranked by dead-weight tonnage, 2019, second and international registries are recorded as foreign or international registries, whereby, for example, ships belonging to owners in the United Kingdom registered in Gibraltar or the Isle of Man are recorded as being under a foreign or international flag. In addition, ships belonging to owners in Denmark and registered in the Danish International Ship Register account for 43.7 per cent of the Denmark-owned fleet in dead-weight tonnage, and ships belonging to owners in Norway registered in the Norwegian International Ship Register account for 26.6 per cent of the Norway-owned fleet in dead-weight tonnage), 2.7., and 2.8.

<sup>380</sup> Act of 16 February 2007 No. 9 relating to Ship Safety and Security (The Ship Safety and Security Act) (with last changes of 12 April 2012). Available at: <https://www.sdir.no/en/shipping/legislation/> Last visited in March 2020.

<sup>381</sup> The Act of 21 June 2013 No. 102 relating to employment protection etc. for employees on board ships (The Ship Labour Act) As amended, most recently by Act of 16 June 2017 No. 51 (in force on 1 January 2018) and Act of 16 June 2017 No. 72 (in force on 1 July 2017). Available at: <https://www.sdir.no/en/shipping/legislation/> Last visited in March 2020.

<sup>382</sup> Guidance Note on Norway's implementation of the Maritime Labour Convention, 2006, of 10 October, 2013. NMA, p. 2. Available at: <http://www.sjofartsdir.no/Global/Sjofolk/Arbeidsforhold/MLC/NMA%20MLC%20Guidance%20Note%20for%20inspections%20and%20certification%2010%20October%202013.pdf> Last visited in March 2020.

<sup>383</sup> Regulations of 19 August 2013 No. 1000 on employment agreement and pay statement, etc. Available at: <https://www.sdir.no/en/shipping/legislation/> Last visited in March 2020.

<sup>384</sup> Employment agreement form approved by Norwegian Maritime Authority, Rev. 2013-05. Available at: <https://www.sdir.no/en/forms-directory/> Last visited in March 2020.

to as a “rederi”, regardless of its organizational structure. The difference in terminology is not significant in practice, as the “reder” and the shipowner are almost the same entity.<sup>385</sup>

Traditionally, the SEA was for service on a named vessel. Taking this to an extreme, it was even contended that the contract was with the ship or, less dramatically, with the master. In both cases, of course, it was, in fact, the shipping company which had rights and obligations under the contract. The tying of the SEA to a specific ship had several implications. For example, the contract came to an end if the ship was lost or subject to long-term repairs. Gradually, so-called “shipping company contracts” became more widespread. These are agreements whereby a seaman is employed to serve on behalf of the shipping company and can be transferred from one ship to another of the shipping company within the framework of the same SEA.<sup>386</sup>

The term “company” and the term “employer” are used to refer to the person or entity responsible for seafarers’ employment.<sup>387</sup>

Section 2-3 (1) of The Ship Labour Act states that for the purposes of the Ship Labour Act, “company” shall mean the entity regarded as the company pursuant to section 4 of the Ship Safety and Security Act. Under Section 4 (1) of the Ship Safety and Security Act, “company” means any company stated as the managing company in the Safety Management Certificate of the ship (i.e., an ISM Company). The owner of a ship can be considered to be a company only in specific cases – if the requirement for a Safety Management Certificate is not applicable to the ship, or the Safety Management Certificate has ceased to be valid or has been withdrawn, or the company does not exist.<sup>388</sup>

According to Section 2-1 of the Ship Labour Act the employer shall mean anyone who has engaged an employee to perform work on board ships. The term “employer” covers the company, itself, as well as the person other than the company who has engaged the employee to perform work on board ships (see Section 2-2 of the Ship Labour Act cited below).<sup>389</sup>

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<sup>385</sup> T. Falkanger, L. Brautaset, H.J. Bull, *supra* note 47, p. 145.

<sup>386</sup> T. Falkanger, L. Brautaset, H.J. Bull, *supra* note 47, p. 145.

<sup>387</sup> See: Chapter 3, Ship Labour Act, *supra* note 381.

<sup>388</sup> Section 4 (2), Ship Safety and Security Act, *supra* note 380.

<sup>389</sup> Section 2-1, Section 2-2, Ship Labour Act, *supra* note 381.

### ***Who is the shipowner – the person with final responsibility?***

The Ship Labour Act prescribes obligations of the employer and company. General obligations and responsibilities of the employer are stated in Section 2-2 of the Ship Labour Act:

*(1) The employer shall ensure that provisions laid down in and pursuant to this Act and the employment agreement are complied with, except in those cases where the company is required to ensure compliance pursuant to this Act.*

*(2) The employer is responsible with regard to his or her own employees for ensuring that their financial requirements and rights as set out in the employment agreement and in provisions laid down in and pursuant to this Act are met.*

*(3) If the employer is someone other than the company, the employer is obliged to participate in ensuring that the obligations of the company pursuant to section 2-4 first and third paragraph are fulfilled. The employer is furthermore obliged to notify the employee in writing regarding who the company is at all times and the company's obligations pursuant to section 2-4.*

Section 2-4 of the Ship Labour Act states general obligations and responsibilities of the company:

*(1) If the employer is someone other than the company, the company has a duty to see to that provisions laid down in and pursuant to this Act or in the employment agreement are complied with, with regard to employees working on board the ship.*

*(2) The company shall ensure compliance with provisions laid down in and pursuant to this Act where this is expressly provided.*

*(3) The company is jointly and severally liable together with the employer for the payment of salary, holiday pay and any financial claims that employees working on board the ship are entitled to pursuant to the provisions set out in chapter 4 of this Act or in regulations issued pursuant to this chapter.*

*(4) Any person who, on behalf of the company, receives information regarding the employer's conduct pursuant to this provision, is bound to observe professional secrecy. The information may only be used to ensure that or investigate whether provisions laid down in and pursuant to this Act or in the employment agreement are complied with, with regard to employees working on board the ship.*

*(5) The Ministry may issue supplementary regulations to the provision.*

From Section 2-4 (1) of the Ship Labour Act, it follows that the company retains the obligation to see to that provisions laid down in and pursuant to the Ship Labour Act or in the SEA are complied with, with regard to employees working on board the ship; and also in the case where the employer is someone other than the company. In such a case, the employer, which is a person

other than the company, is obliged to participate in ensuring the obligations of the company.<sup>390</sup> Section 2-4 (1), cited above, contains regulation on joint and several liability of the company and employer. If there is joint liability of the company and the employer, the employee must make a written claim against the company and the company shall pay the claim within three weeks of receipt of the claim.<sup>391</sup>

It can be concluded that Norwegian law defines very clearly who is the person with final responsibility in respect of seafarers' employment which is very important from the seafarer's perspective. This person usually is an ISM Company.

### ***Does a seafarer have information about the responsible employer?***

A written SEA has to be signed between the employee and the employer or whomever is authorized by the employer and shall contain information on the employer's name and address.<sup>392</sup> The SEA shall be entered into using the form prescribed by the NMA or another SEA form approved by the NMA.<sup>393</sup>

If the employer is someone other than the company, the Ship Labour Law requires the employer to notify the employee in writing regarding who the company is at all times and the company's obligations (see Section 2-2 of Ship Labour Act cited above).<sup>394</sup> The same obligation is contained in Section 2 (3) of Regulation No. 1000:

*If the employer is someone other than the company, the employer shall, in connection with the entering into of the employment agreement, inform the employee in writing as to who the company is. If it at the time of the entering into of the agreement is not clear who the company is, the employer shall inform the employee in writing as soon as this information is known to the employer.*<sup>395</sup>

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<sup>390</sup> Section 2-2 (3), Ship Labour Act, *supra* note 381.

<sup>391</sup> Section 2-5 (1), Ship Labour Act, *supra* note 381.

<sup>392</sup> Section 3-1 (1), Ship Labour Act, *supra* note 381; Section 2, Regulations No. 1000, *supra* note 383; SEA form approved by the NMA, *supra* note 384.

<sup>393</sup> Section 3, Regulations No. 1000, *supra* note 383.

<sup>394</sup> Section 2-2 (3), Ship Labour Act, *supra* note 381.

<sup>395</sup> Regulations No. 1000, *supra* note 383.

The legal obligation cited above is also emphasized by guidelines and comments regarding completion of a SEA, available on the back of the SEA standard form.<sup>396</sup> Accordingly, there is clear regulation in place in Norway to ensure that a seafarer, in any case, has information on the final responsible person in respect of his employment.

### **3.8. The Philippines**

In 2012, on the date of registration of the MLC's ratification by the Philippines, the Philippines was called the largest source of the world's seafarers and the home of nearly one third – 30 per cent – of seafarers working on foreign flag ships; while the country also has a large domestic fleet, with nearly as many seafarers working on domestically flagged ships.<sup>397</sup> According to the BIMCO and International Chamber of Shipping (ICS) report from 2015, the Philippines is the second largest seafarer supplying country in the world, after China.<sup>398</sup> In 2017, the Philippines was ranked the 32nd country among the 35 leading flags of registration by tonnage.<sup>399</sup> In 2019, the Philippines were unranked in the list of these 35 countries and could no longer be found among the leading flags of registration by tonnage.<sup>400</sup>

The MLC entered into force in the Philippines on 20 August 2013. The MLC is implemented through two legal regimes, one covering seafarers working on ships engaged in domestic voyages and the other covering seafarers working on ships engaged in international voyages.<sup>401</sup>

The following implementing legislation adopted by the Department of Labour and Employment of the Republic of the Philippines (DOLE) and the Philippine Overseas Employment Administration (POEA) are considered below:

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<sup>396</sup> See commentary in respect of box 11, Form of SEA prescribed by the NMA, *supra* note 384.

<sup>397</sup> See information on ILO website [https://www.ilo.org/global/standards/maritime-labour-convention/WCMS\\_187712/lang--en/index.htm](https://www.ilo.org/global/standards/maritime-labour-convention/WCMS_187712/lang--en/index.htm) Last visited in March 2020.

<sup>398</sup> Manpower Report 2015, BIMCO/ICS. Executive summary. Available at: <http://www.ics-shipping.org/free-resources/manpower-report-2015>

<sup>399</sup> Table 2.6., UNCTAD Review of maritime transport 2017, *supra* note 35.

<sup>400</sup> Table 2.8., UNCTAD Review of maritime transport 2019, *supra* note 36.

<sup>401</sup> See Direct Request (CEACR) - adopted 2014, published 104th ILC session (2015). Maritime Labour Convention, 2006 (MLC, 2006, 2006) - Philippines (Ratification: 2012). CEARC comment on General questions on application. Implementing measures, *supra* note 165.

- Department Order No. 129-13 Rules and Regulations Governing the Employment and Working Conditions of Seafarers Onboard Ships Engaged in Domestic Shipping<sup>402</sup> (DOLE Order No.129-13) covers Philippine registered ships engaged in domestic shipping between Philippine ports, and within Philippine territorial or internal waters.

- Department Order No. 130-13 Rules and Regulations on the Employment of Filipino Seafarers Onboard Philippine Registered Ships Engaged in International Voyage<sup>403</sup> (DOLE Order No.130-13) covers Philippine registered ships engaged in international voyages.

- 2016 Revised POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers<sup>404</sup> (2016 Revised POEA Rules).

- POEA Memorandum Circular No. 10 s. 2010 Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships<sup>405</sup> (POEA Circular No. 10). In understanding of the CEACR the Circulars are a form of regulatory action taken by the competent authority under the relevant legislation and are regarded as having the force of law.<sup>406</sup>

- DOLE Procedural Guidelines on the Provision of Financial Security in Compliance with the Amendments Implementing Regulations 2.5 and 4.2 and Appendices of the Maritime Labour Convention, 2006 (MLC, 2006)<sup>407</sup> (DOLE Order 181 B-18).

It is noted by CEACR in 2014, that a “Magna Carta of Seafarers” – a comprehensive law implementing the MLC and applicable to all Filipino seafarers and ships, is under consideration by the Congress of the Republic of the Philippines.<sup>408</sup> On 31 July 2019, this draft of law “Magna Carta of Filipino Seafarers” (Senate Bill No. 357) was read on First Reading and Referred to the Committee on Labour, Employment, and Human Resources Development; and the Committee on

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<sup>402</sup> Department of Labour and Employment, Order No. 129-13 Rules and Regulations Governing the Employment and Working Conditions of Seafarers Onboard Ships Engaged in Domestic Shipping. Available at: <https://www.dole.gov.ph/issuances> Last visited in March 2020.

<sup>403</sup> Department of Labour and Employment, Order No. 130-13 Rules and Regulations on the Employment of Filipino Seafarers Onboard Philippine Registered Ships Engaged in International Voyage. Available at: <https://www.dole.gov.ph/issuances> Last visited in March 2020.

<sup>404</sup> 2016 Revised POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers. <http://www.poea.gov.ph/laws&rules/laws&rules.html> Last visited in March 2020.

<sup>405</sup> POEA Memorandum Circular No. 10 s. 2010 Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Ships. <http://www.poea.gov.ph/memorandumcirculars/mc.html> Last visited in March 2020.

<sup>406</sup> *Supra* note 401.

<sup>407</sup> DOLE Order 181 B-18 Procedural Guidelines on the Provision of Financial Security in Compliance with the Amendments Implementing Regulations 2.5 and 4.2 and Appendices of the Maritime Labour Convention, 2006 (MLC, 2006). Available at: <https://www.dole.gov.ph/issuances> Last visited in March 2020.

<sup>408</sup> *Supra* note 401.

Foreign Relations of the Senate of the Philippines.<sup>409</sup> The draft law declares that state policy, among others, enact laws which adopt and also implement the MLC.<sup>410</sup> The “Magna Carta of Filipino Seafarers” shall cover Filipino seafarers: engaged, employed, or working in any capacity on board Philippine registered ships operating domestically or internationally as well as those on board foreign registered ships.<sup>411</sup>

### ***Term and definition***

Under Rule II Section 1 of DOLE Order No.130-13, applicable to the ships engaged in international shipping, a shipowner is defined as in the following:

*r) “Shipowner” refers to the owner of the ship/shipping enterprise or another organization or person, such as the manager, agent or bareboat charterer, who has assumed responsibility for the operation of the ship from the owner who, on assuming such responsibility has agreed to take over the duties and responsibilities imposed on shipowners, regardless of whether any other organization or persons fulfil certain duties or responsibilities on behalf of the shipowner.*

Under Rule II Section 1 of DOLE Order No.129-13, applicable to domestic ships, a shipowner is defined as in the following:

*q) “Shipowner” refers to the owner of the ship/shipping enterprise or another organization or person, such as the manager, agent or bareboat charterer, who has assumed responsibility for the operation of the ship from the owner who, on assuming such responsibility has agreed to take over the duties and responsibilities imposed on shipowners in accordance with the Maritime Labour Convention, 2006 (MLC, 2006) regardless of whether any other organization or persons fulfil certain duties or responsibilities on behalf of the shipowner.*

Section 4 of the draft of law “Magna Carta of Filipino Seafarers” defines a shipowner in the following manner:

*“Shipowner” refers to the owner of the ship employing Filipino seafarers to work on board domestic ships and ships engaged in international trade, or any other organization or person, such as the manager, agent or bareboat charterer, who has assumed responsibility for the operation and management of the ship, and*

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<sup>409</sup> Information on current status of draft law “Magna Carta of Filipino Seafarers” is available at: [https://www.senate.gov.ph/lis/bill\\_res.aspx?congress=18&q=SBN-357](https://www.senate.gov.ph/lis/bill_res.aspx?congress=18&q=SBN-357) Last visited in March 2020.

<sup>410</sup> Section 2 (d), draft law “Magna Carta of Filipino Seafarers”, *ibid.*

<sup>411</sup> Section 3, draft law “Magna Carta of Filipino Seafarers”, *supra* note 409.

*who, on assuming such responsibilities, has agreed to take over all the attendant duties and responsibilities of shipowner under this Act, regardless of whether any other organization or persons fulfil certain duties or responsibilities on behalf of the shipowner.*

All three definitions are similar. The only definition applicable to domestic ships, however, explicitly requires that the person other than the owner, assuming responsibility for operation of the ship, also take over the responsibility imposed on shipowners in accordance with the MLC. Philippine law contains definitions of other persons acting as the employer of seafarers as cited below.

### ***Who is the shipowner – the person with final responsibility?***

Under the DOLE Orders, the SEA for seafarers employed on board ships engaged in domestic voyages, as well as on board ships engaged in international voyages, shall be in writing between the shipowner and seafarer and shall contain the shipowner's name and address.<sup>412</sup>

The 2016 Revised POEA Rules also address liability of third persons involved in seafarers' employment. Rule II *Definition of terms* of the 2016 Revised POEA Rules contains the following definitions:

*(...) 24. Licensed Manning Agency — refers to a person, partnership or corporation duly licensed by the Secretary or his/her duly authorized representative to engage in the recruitment and placement of Filipino seafarers for a ship plying international waters and for related maritime activities.*

*(...) 29. New Principal — refers to a principal/employer which has never been accredited with any licensed manning agency; provided, that its new ship must not have been enrolled with any licensed manning agency. The principal/employer and its ship shall likewise not have directly hired Filipino seafarers.*

*(...) 39. Principal — refers to the employer or to a person, partnership or corporation engaging and employing seafarers through a licensed manning agency.*

*(...) 45. Shipowner — refers to 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 a shipowner in accordance with the MLC, 2006 regardless of whether any other organization or persons fulfil part or certain duties or responsibilities on behalf of the shipowner.*

Under Rule II *Issuance of Licence*, Section 4 of the Revised 2016 POEA Rules, any person applying for a license to operate a manning agency shall file a written application with the POEA

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<sup>412</sup> Rule III, Section 1 of DOLE Order No. 129-13, *supra* note 401; DOLE Order No. 130-13, *supra* note 402, Rule IV, Section 1.

together with the following requirements attesting joint and several liability of persons involved in seafarers' employment:

*(...) F. A duly notarized undertaking by the sole proprietor, the managing partner, or the president of the corporation, stating that the applicant shall:*

*(...) 3. Assume joint and several liability with the employer/shipowner/principal for all claims and liabilities which may arise in connection with the implementation of the contract, including but not limited to unpaid wages, death and disability compensation and repatriation;*

*(...) G. In case of a corporation or partnership, a duly notarized undertaking by the corporate officers and directors, or partners, that they shall be jointly and severally liable with the corporation or partnership for claims and/or damages that may be awarded to the seafarers;*

According to the 2016 Revised POEA Rules, joint and several liability refers to the nature of liability of the principal/employer and the licensed manning agency, for any and all claims arising out of the implementation of the employment contract involving seafarers. It shall, likewise, refer to the nature of liability of: partners, officers and directors with partnership, or corporations over claims arising from employer-employee relationship.<sup>413</sup>

The principle of joint and several liability is also reflected in DOLE Order 181 B-18. Under paragraph 5 of this Order:

*5. The submission of a copy of financial security document shall be a requirement for enrolment of the Philippine registered ships engaged in international voyage with the POEA. The shipowner (Philippine owned tonnage) or bareboat charterer shall also execute an Affidavit of Undertaking (see Annex A) ensuring continuing financial security coverage of the crew. In case of tie-up between shipowner (owned tonnage) or bareboat charterer with a licensed manning agency, the Affidavit of Undertaking (see Annex B) shall be jointly executed.*

It follows that Philippine shipowner additionally to the Financial Security Certificate covering abandonment and /or compensation for contractual claims, should submit a statement that it ensures continuing financial security coverage for the crew. If the services of a licenced manning agency are used for employment of crew the statement has to be signed by the shipowner or bareboat charterer, and the manning agency, where both signatories jointly declare:

*1. That, we are requesting for enrolment of (name of ship) with POEA;*

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<sup>413</sup> Rule II *Definitions and terms*, paragraph 20, 2016 Revised POEA Rules, *supra* note 404.

2. That, we adhere to the amendments of the Code implementing Regulations 2.5. and 4.2. and appendices of the Maritime Labour Convention, 2006 (MLC, 2006) on Financial Security for Philippine flagships;

3. That, we had secured an insurance coverage for the financial security of our crew provided by (name of insurance provider); and

4. That, we ensure continuing financial security coverage of our crew in accordance with Department Order No. \_\_, Series of \_\_.<sup>414</sup>

The Affidavit of Undertaking should be signed in the presence of a Notary Public.<sup>415</sup>

### ***Does a seafarer have information about the responsible employer?***

Under Rule III, Section 1 of DOLE Order No. 129-13, the SEA shall be in writing between the shipowner and the seafarer, and shall include, inter alia, the shipowner's name and address. The SEA shall be executed in three original copies; the shipowner and the seafarer shall each have a signed original, and an electronic copy shall be submitted to the DOLE through the BWC (the Bureau of Working Conditions of the DOLE). According to DOLE Order No. 130-13, Rule IV, Section 1, the SEA shall be in writing between the shipowner and the seafarer. The SEA shall be submitted to the DOLE through the POEA for approval. The shipowner, the seafarer, the manning agency, as the case may be, and the POEA shall each have a signed and approved original copy of the SEA.<sup>416</sup> Definitions of the term "shipowner" in the afore-mentioned Orders are given above. An inclusion in the SEA of information on an employer who is other than the shipowner is not regulated by these Orders of the DOLE.

The 2016 Revised POEA Rules require use of a standard SEA. The Administration, through tripartite consultation involving seafarers and the private sector, shall determine, formulate and establish minimum, separate and distinct standard employment contracts for seafarers, in accordance with accepted international standards and maritime practices. These standard employment contracts, which shall be reviewed periodically to keep them attuned to international requirements and demands, shall be the minimum requirement in every individual contract approved by the Administration.<sup>417</sup>

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<sup>414</sup> Annex B, DOLE Order 181 B-18, *supra* note 407.

<sup>415</sup> Annex B, DOLE Order 181 B-18, *supra* note 407.

<sup>416</sup> Rule III Section 118, paragraph b. 2016 Revised POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers, *supra* note 404.

<sup>417</sup> Rule I *Formulation of Standard Employment Contracts*, Section 115, 2016 Revised POEA Rules and Regulations Governing the Recruitment and Employment of Seafarers, *supra* note 404.

For seafarers working on ships registered in the Philippines engaged in international voyages, Rule IV, Section 2 of DOLE No. 130 of 2013 provides that the terms and conditions of employment must be governed by the POEA Circular No. 10,<sup>418</sup> which contains minimum standard terms. Responsibility in respect of employed seafarers, including to faithfully comply with the stipulated terms and conditions of this contract, and in particular: the prompt payment of wages, remittance of allotment, the expeditious settlement of valid claims of the seafarer, and the<sup>419</sup> provision of a workplace, is entrusted to the “Principal/Employer/Master/Company”.<sup>420</sup> POEA Circular No. 10 contain the following definition:

*12. Principal/Employer/Company – any person, partnership or corporation hiring Filipino seafarers to work onboard ocean-going ships.*

The terms “principal”, “employer” and “company” are used jointly as well as individually throughout the POEA Circular No. 10 to describe obligations of the person responsible for the recruiting and employment of seafarers. Here are given some examples (with the author’s underlining of relevant terms):

*(...) SECTION 2. COMMENCEMENT/DURATION OF CONTRACT*

*A. The employment contract between the employer and the seafarer shall commence upon actual departure of the seafarer from the Philippines airport or seaport in the point of hire and with a POEA approved contract. (...)*

*SECTION 9. FINAL WAGE ACCOUNT & CERTIFICATE OF EMPLOYMENT*

*The seafarer, upon his discharge, shall be given a written account of his final wages reflecting all deductions therefrom.(...) Upon the seafarer’s request, he shall also be provided by his principal/employer/master/company his certificate of employment of service record without charge. (...)*

*SECTION 19. REPATRIATION*

*(...) B. If the ship arrives at a convenient port before the expiration of the contract, the principal/employer/master/company may repatriate the seafarer from such port, provided the unserved portion of his contract is not more than one (1) month. (...)*

*SECTION 20. COMPENSATION AND BENEFITS*

*A. COMPENSATION AND BENEFITS FOR INJURY OR ILLNESS*

*The liabilities of the employer when the seafarer suffers work-related injury or illness during the term of his contract are as follows:*

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<sup>418</sup> Rule IV, Section 2, DOLE Order No. 130-13, *supra* note 403.

<sup>419</sup> Section 1 Duties, A. 1., POEA Circular No. 10, *supra* note 405.

<sup>420</sup> Section 1 Duties, POEA Circular No. 10, *supra* note 405.

1. The employer shall continue to pay the seafarer his wages during the time he is on board the ship;  
(...)

B. COMPENSATION AND BENEFITS FOR DEATH

1. In case of work-related death of seafarer, during the term of his contract, the employer shall pay his beneficiaries (...).

SECTION 26. CHANGE OF PRINCIPAL

A. Where there is a change of Principal of the ship necessitating the pre-termination of employment of the seafarer, the seafarer should be entitled to earned wages and repatriation at employer's expense. He shall also be entitled to one (1) month basic pay as termination pay.

B. In case arrangements have been made for the seafarer to directly join another ship of the same Principal to complete his contract, he shall only be entitled to basic wage from the date of his disembarkation from his former ship until the date of his joining the new ship.

Accordingly, it is not possible to conclude from the regulation contained in the POEA Circular No. 10 that there should be one person with final responsibility for seafarers' employment. Although joint and several liability of the shipowner and other parties involved in seafarers' employment is addressed by Philippine law, it is not clear as to whom is the person with final responsibility in respect of seafarers' employment, whether persons other than the shipowner can sign the SEA, or whether the information on the shipowner shall be enclosed to the seafarer in such a case. Current draft of law "Magna Carta of Filipino Seafarers" does not add clarity. Its Section 21 states that there should be an agreement in writing between the shipowner and the seafarer, which shall include, amongst others, also the shipowner's name and address.<sup>421</sup> For seafarers on-board foreign registered ships, the POEA Standard Employment Contract (POEA-SEC) approved by the DOLE shall be observed.<sup>422</sup>

### 3.9. Spain

The MLC was ratified by Spain on February 4<sup>th</sup> 2010, making it the first Member State of the European Union to do so. Accordingly, the MLC entered into force in Spain on 20 August 2013.

At national level, the two main laws applicable to seafarers are the Workers' Statute (Legislative Royal Decree 2/2015)<sup>423</sup> and the Act 14/2014 of 24 July on Maritime Navigation

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<sup>421</sup> Section 21 (b), draft law "Magna Carta of Filipino Seafarers", *supra* note 409.

<sup>422</sup> Section 21, draft law "Magna Carta of Filipino Seafarers", *supra* note 409.

<sup>423</sup> The Workers' Statute (Legislative Royal Decree 2/2015) (*Real Decreto Legislativo 2/2015, de 23 de octubre, por el que se aprueba el texto refundido de la Ley del Estatuto de los Trabajadores*). Text in Spanish is available at: [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2015-11430](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-11430). Text in English is available at: <https://www.global->

(MNL – *Ley de Navegación Marítima*).<sup>424</sup> The first one has a general scope and governs the relationship between workers and employers. It also governs the relationship between seafarers and shipowners. The MNL also applies to seafarers as Chapter III of Title III rules the crew. Articles of this Chapter deal with requirements for seafarers to be part of the crew: qualifications, certification and inspection, and master status.

### ***Term and definition***

MNL uses the term “shipping company”, not “shipowner”. Additionally, the two terms “ship-operator” and “shipping company” are used to refer to the person responsible for seafarers’ employment. Both terms are explained by the MNL under Title III *On the subjects of navigation*, Chapter I:

*Article 145. Concept of ship-operator and shipping company.*

- 1. A ship-operator is the party that, whether or not it is the owner, has the possession of a ship or vessel, directly, or through its servants, and uses it for navigation in its own name and under its responsibility.*
- 2. A shipping company is deemed as the natural or legal person that, using own or third party merchant ships, carries out the operation thereof, even when that is not its main activity, under any mode permitted in international practice.*
- 3. In the case of co-ownership of a ship, the status of ship-operator shall befall each one of the co-owners, without prejudice to their right to appoint an administrator.*

However, it is not clear if the concepts given above also apply to regulation in other Chapters, including to regulation on the crew.

### ***Who is the shipowner – the person with final responsibility?***

The Workers’ Statute applies to all employees. Accordingly, it does not address specificity of employment in shipping. Article 8 of the Workers’ Statute regulates the form of the employment

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[regulation.com/translation/spain/615191/royal-legislative-decree-2-2015%252c-on-23-october%252c-which-approves-the-recasted-text-of-the-law-of-the-statute-of-workers.html](http://regulation.com/translation/spain/615191/royal-legislative-decree-2-2015%252c-on-23-october%252c-which-approves-the-recasted-text-of-the-law-of-the-statute-of-workers.html) Last visited in March 2020.

<sup>424</sup> The Act 14/2014 of 24 July on Maritime Navigation (the Maritime Navigation Law or MNL), in force since 25 September 2014. An English translation can be found at: [http://www.mjusticia.gob.es/cs/Satellite/Portal/1292427275074?blobheader=application%2Fpdf&blobheadername1=Content-Disposition&blobheadervalue1=attachment%3B+filename%3DAct\\_14\\_2014\\_\\_dated\\_24th\\_july\\_\\_on\\_Maritime\\_Navigation\\_](http://www.mjusticia.gob.es/cs/Satellite/Portal/1292427275074?blobheader=application%2Fpdf&blobheadername1=Content-Disposition&blobheadervalue1=attachment%3B+filename%3DAct_14_2014__dated_24th_july__on_Maritime_Navigation_). Last visited in March 2020.

contract. It follows that employment contracts do not always need to be in writing (for example, if the contract period is less than four weeks a written form may not be mandatory).<sup>425</sup> Article 8, paragraph 5 of the Workers' Statute states, that entrepreneurs shall inform, in writing, the worker on the essential elements of the contract.

A CEACR Committee noted in respect of the above-mentioned:

*Noting, however, that the applicable legislation does not require a written agreement in case of contracts for fixed-term duration of less than four weeks and for contracts for an indefinite period, the Committee recalls that the Convention does not allow for any exception to the principle of written SEAs and provides for the adoption of laws and regulations to comply with the requirements set out by paragraph 1 of Standard A2.1. The Committee requests the Government to take the necessary measures to ensure in law and in practice that all seafarers' employment agreements are in writing (paragraph 1 of Regulation 2.1, and paragraph 1(a) of Standard A2.1) and contain the elements listed under paragraph 4 of Standard A2.1.<sup>426</sup>*

Under Article 156, paragraph 1 of the MNL, a crew includes the set of individuals employed on board a ship in any of its departments or services, hired either directly by the ship-operator or by third parties.

Article 164 of the MNL governs hiring of crew (Manning Agents):

- 1. No operation to hire ships' crews may give rise to the mariners having to pay any remuneration, directly or indirectly, to any natural or legal person.*
- 2. The agents or representatives of foreign ship-operators who hire national or resident mariners in Spain to serve on foreign ships shall be jointly and severally liable with that ship-operator for fulfilment of the contract entered into. They shall also be bound to arrange a mercantile insurance contract to grant compensation of a similar amount to those established in the Spanish Social Security regime in cases of death, disability due to accident and repatriation. The emigration authorities shall not approve contracts entered into that do not fulfil that requisite.*

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<sup>425</sup> Article 8, the Workers' Statute, *supra* note 423:

*1. the employment contract shall be entered in writing or Word. Presumed existing among all which provides services on behalf and within the scope of organization and management of another and which receives in Exchange for compensation to him.*

*2 must be written work when required by a provision of the law and contracts, in all case, the practices and for training and learning, part-time contracts, permanent-intermittent and relief, the contracts for the realization of a project or specific service, workers who work to distance and those hired in Spain in the service of Spanish companies abroad. Also shall include written contracts for period whose duration is more than four weeks. Failure to observe this requirement, the contract shall be presumed held indefinitely and full-time, unless proven otherwise, stating its temporary nature or the part-time nature of services (...).*

<sup>426</sup> See Direct Request (CEACR) - adopted 2015, published 105th ILC session (2016). Maritime Labour Convention, 2006 (MLC, 2006) - Spain (Ratification: 2010). CEACR note in respect of Regulation 2.1 and the Code. Seafarers' employment agreements, *supra* note 165.

In the Article above there is regulation only in respect of recruitment of Spanish seafarers by foreign ship-operators. The Article above also contains regulation on joint or several liability of foreign ship-operators and intermediaries acting on behalf of the foreign ship-operator.

***Does a seafarer have information about the responsible employer?***

According to Spanish Law, the final responsible person in respect of seafarers' employment is the person named in the MLC certificate and the DMLC as the shipowner. The Spanish MLC certificate (“Certificado de Trabajo Marítimo”) was attached to the Instrument of Ratification of the Maritime Labour Convention, 2006, done at Geneva on 23 February 2006 (Instrumento de Ratificación del Convenio sobre el trabajo marítimo, 2006, hecho en Ginebra el 23 de febrero de 2006), in its Annex A5-III. In this document, the ship's information and the name and address of the shipowner need to be indicated. The term “shipowner” in the MLC certificate is used in the meaning of the term “shipowner” in Article II, paragraph 1(j) of the MLC. Under Standard A5.1.3, paragraph 12 of the MLC, the MLC certificate and DMLC shall be displayed in a visible place on board the ship so that seafarers have access to it and know who the employer is.

Likewise, the seafarer may be hired by a manning agent instead of the shipowner, himself; in this respect, Article 164 of the MNL (cited above) establishes that the agent or representatives of foreign shipowners who hire national or resident seafarers in Spain will be jointly liable with the shipowner in addition to being obliged to take out commercial insurance. The seafarer will know who the responsible employer is from the signatory of the SEA, which may or may not coincide with the shipowner. If the SEA is signed by the agent, the agent also has to identify his principal in the SEA, as required by the Spanish Ley de Agencia 12/1992 (Agency Law, implementing Council Directive of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents (86/653/EEC)).<sup>427</sup> If an agent does not identify his principal (the shipowner, on whose behalf he acts), the agent has full responsibility towards the other contractor of the SEA – the seafarer.

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<sup>427</sup> Council Directive of 18 December 1986 on the coordination of the laws of the Member States relating to self-employed commercial agents (86/653/EEC). Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A31986L0653> Last visited in March 2020.

### 3.10. The UK

In 2019, the UK ranked 12<sup>th</sup> in ownership of the world's fleet (86.31 percent of total (dwt) having under foreign flag), 8<sup>th</sup> among top shipping countries, and was also the 18<sup>th</sup> country of the 35 leading flags of registration by dead-weight tonnage.<sup>428</sup> With 24, 375 masters and officers holding valid certificates of competency, the UK was 1st among EU Member States in numbers of masters and officers in 2018.<sup>429</sup>

The MLC entered into force in the UK on 20 August 2013. The following implementing legislation are considered below:

- Merchant Shipping Act 1995,<sup>430</sup>

S.I. 2013/1785 Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013<sup>431</sup> (S.I. 2013/1785);

S.I. 2014/1613 Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.)<sup>432</sup> (S.I. 2014/1613);

- Marine Guidance Note, MGN 471 (M) Maritime Labour Convention, 2006: Definitions,<sup>433</sup>

- Marine Guidance Note, MGN 477 (M) Maritime Labour Convention, 2006: Seafarers' Employment Agreements;<sup>434</sup>

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<sup>428</sup> UNCTAD Review of maritime transport 2019, *supra* note 36, table 2.6. (For the purposes of table 2.6. Ownership of world fleet ranked by dead-weight tonnage, 2019, second and international registries are recorded as foreign or international registries, whereby, for example, ships belonging to owners in the United Kingdom registered in Gibraltar or the Isle of Man are recorded as being under a foreign or international flag. In addition, ships belonging to owners in Denmark and registered in the Danish International Ship Register account for 43.7 per cent of the Denmark-owned fleet in dead-weight tonnage, and ships belonging to owners in Norway registered in the Norwegian International Ship Register account for 26.6 per cent of the Norway-owned fleet in dead-weight tonnage), 2.7., and 2.8.

<sup>429</sup> Seafarers' Statistics in the EU, *supra* note 377, Figure 2-1, Figure 2-51.

<sup>430</sup> Merchant Shipping Act 1995. Available at: <http://www.legislation.gov.uk/> Last visited in March 2020.

<sup>431</sup> S.I. 2013/1785 Merchant Shipping (Maritime Labour Convention) (Survey and Certification) Regulations 2013. Available at: <http://www.legislation.gov.uk/> Last visited in March 2020.

<sup>432</sup> S.I. 2014/1613 The Merchant Shipping (Maritime Labour Convention) (Minimum Requirements for Seafarers etc.). Available at: <http://www.legislation.gov.uk/> Last visited in March 2020.

<sup>433</sup> Marine Guidance Note, MGN 471 (M) Maritime Labour Convention, 2006: Definitions. Published 28 September 2013. Available at: <https://www.gov.uk/government/publications> Last visited in March 2020.

<sup>434</sup> Marine Guidance Note, MGN 477 (M) Maritime Labour Convention, 2006: Seafarers' Employment Agreements. Available at: <http://www.legislation.gov.uk/> Last visited in March 2020.

- Merchant Shipping Notice 1848(M) Amendment 2 Maritime Labour Convention, 2006 Survey and Certification of UK Ships.<sup>435</sup>

### ***Term and definition***

UK law states that the term “shipowner” means:

*(a) in relation to a ship which has a valid Maritime Labour Certificate, the person identified as the shipowner on that certificate,*

*(b) in relation to any other ship, the owner of the ship or, if different, any other organization or person such as the manager, or the bareboat charterer, that has assumed the responsibility for the operation of the ship from the owner.<sup>436</sup>*

Paragraph 4.4 of MGN 471 (M) explains that the final part of the MLC definition was omitted from the UK definition on the basis of the following considerations:

*Under the MLC definition, in order for another person (X) to be the shipowner rather than the actual shipowner, the MLC definition requires (a) that X has assumed the responsibility for the operation of the ship; (b) that X has entered into an agreement to take over MLC duties and responsibilities under the MLC. This potentially leaves the person named on the certificate the scope to dispute the existence of these elements as a means of resisting enforcement of MLC obligations, which would, as a minimum, delay the seafarer receiving their entitlements while the issue is resolved, and could leave the MCA only able to take action against the shipowner instead, which may be inappropriate in the circumstances.*

Additionally, the word “agent” is not contained in the UK definition because:

*The word “agent” is omitted from the proposed UK definition. The term “agent” in the MLC definition does not mean “agent” in its usual English legal sense. It is not best legal drafting practice to use a term which is inconsistent with its natural or usual meaning. If it were the shipowner’s “agent” in the sense of a person acting on the shipowner’s behalf, it is difficult to see the circumstances in which the agent would accept personal liability for the shipowner’s responsibilities.<sup>437</sup>*

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<sup>435</sup> Merchant Shipping Notice 1848(M) Amendment 2 Maritime Labour Convention, 2006 Survey and Certification of UK Ships, Published 7 June 2018. Available at: <https://www.gov.uk/government/publications> Last visited in March 2020.

<sup>436</sup> See: Section 2 (1) of the S.I. 2013/1785, *supra* note 431; Section 2 (1) S.I. 2014/1613, *supra* note 432.

<sup>437</sup> Paragraph 4.3, Marine Guidance Note, MGN 471 (M), *supra* note 433.

### ***Who is the shipowner – the person with final responsibility?***

A MLC certificate issued under S.I. 2013/1785 must be drawn up in a form corresponding to the model given in Merchant Shipping Notice 1848(M) and have the content specified in that Merchant Shipping Notice.<sup>438</sup> The definition of “shipowner” used in the MLC Certificate is identical to the definition contained in the MLC<sup>439</sup>. It is stated in the form of the DMLC – Part I under section 4. *Seafarers’ employment agreements (Regulation 2.1)*:

*If the SEA is signed by a representative of the shipowner (e.g. manning agent, franchise supplier), that representative must be named as an authorized representative in the shipowner’s DMLC Part 2.*<sup>440</sup>

It is emphasized in Marine Guidance Note, MGN 471 (M) that the person named on the MLC certificate has, by definition, accepted the responsibilities and liabilities set out in the MLC towards seafarers on their vessels.<sup>441</sup>

Accordingly, whoever is mentioned in the MLC certificate, that person, is the final responsible person in respect of seafarers’ employment.

### ***Does a seafarer have information about the responsible employer?***

An agreement in writing shall be made between each person employed as a seaman on a UK ship and the person employing him, and shall be signed by both.<sup>442</sup> The provisions and form of a crew agreement must be of a kind approved by the Secretary of State; and different provisions and forms may be so approved for different circumstances.<sup>443</sup>

S.I. 2014/1613 prescribes requirements for the SEA. A seafarer must have a SEA which complies with this regulation.<sup>444</sup> Section 9 (2), S.I. 2014/1613 states that in cases where the seafarer is employed by a person other than the shipowner:

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<sup>438</sup> Section 7 (3), S.I. 2013/1785, *supra* note 431.

<sup>439</sup> Annex 2, 3, 5 of the Merchant Shipping Notice 1848(M), *supra* note 435.

<sup>440</sup> Annex 5 of the Merchant Shipping Notice 1848(M), *supra* note 435.

<sup>441</sup> Paragraph 4.5, Marine Guidance Note, MGN 471 (M), *supra* note 433.

<sup>442</sup> Section 25 (1), Merchant Shipping Act 1995, *supra* note 430.

<sup>443</sup> Section 25 (3), Merchant Shipping Act 1995, *supra* note 430.

<sup>444</sup> Section 9 (1), S.I. 2014/1613, *supra* note 432.

- (a) the employer of the seafarer must be a party to the seafarer employment agreement; and
- (b) the seafarer employment agreement must include provision under which the shipowner guarantees to the seafarer the performance of the employer's obligations under the agreement insofar as they relate to the matters specified in—
  - (i) paragraphs 5 to 11 of Part 1 of Schedule 1<sup>445</sup>; and
  - (ii) Part 2<sup>446</sup> of Schedule 1.

Provisions to be included in the SEA are listed in Schedule 1 of the S.I. 2014/1613. The name and address of the shipowner shall be included in all SEA's.<sup>447</sup> Under Section 9 (5) of S.I. 2014/1613, a breach of the above-mentioned is an offence by the shipowner.

A recommended model format for the SEA for an employed seafarer is provided at Annex 2 to the MGN 477. The format is not mandatory; however, all the required information must be included in any alternative form of the SEA.<sup>448</sup> Paragraph 4 *Duty to enter Seafarer Employment Agreement* of the MGN 477 specifies (author's underlining):

*4.1 Every seafarer working on a UK sea-going ship to which the MLC Minimum Requirements Regulations apply must have a written SEA with another person in respect of the seafarer's work on a ship, which contains at least the information specified in Schedule 1 to the MLC Minimum Requirements Regulations (see Annex 1 to this MGN).*

*4.2 Where the seafarer is directly employed by the shipowner the SEA should be between the seafarer and the shipowner and must be signed by both the seafarer and the shipowner or an authorised signatory of the*

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<sup>445</sup> Paragraphs 5 to 11 of Part 1 of Schedule 1 of S.I. 2014/1613, *supra* note 432:

5. *The capacity in which the seafarer is to work.*
6. *If the agreement has been made for a definite period, the termination date.*
7. *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.*
8. *If the agreement has been made for a particular voyage, the destination port and the period following arrival after which the agreement terminates.*
9. *The health and social security protection benefits to be provided to the seafarer under the agreement.*
10. *The maximum period of service on board following which the seafarer is entitled to repatriation (which must not exceed a period of 12 months less the number of days statutory paid leave to which the seafarer is entitled).*
11. *The seafarer's entitlement to repatriation (including the mode of transport and destination of repatriation).*

<sup>446</sup> Part 2 of Schedule 1 of S.I. 2014/1613, *supra* note 432:

1. *The wages (either the amount or the formula to be used in determining them).*
2. *The manner in which wages must be paid, including payment dates (the first of which must be no more than one month after the date on which the agreement is entered into, with all subsequent dates being no more than one month apart) and the circumstances (if any) in which wages may or must be paid in a different currency.*
3. *The hours of work.*
4. *The paid leave (either the amount or the formula to be used in determining it).*
5. *Any pension arrangements, including any entitlement to participate in a pension scheme.*
6. *The grievance and disciplinary procedures*

<sup>447</sup> Part 1 (2) of Schedule 1, S.I. 2014/1613, *supra* note 432.

<sup>448</sup> Paragraph 6 of Summary to the MGN 477 (M), *supra* note 434.

*shipowner. Any signatory authorised by the shipowner to sign SEAs for seafarers working on the ship should be named in Part 2 of the Declaration of Maritime Labour Compliance for the ship.*

*4.3 Where a seafarer is not directly employed by the shipowner but is employed by a third party (e.g. a manning agency), the employer must be a party to the SEA. In such cases, the shipowner (or an authorised signatory of the shipowner) must also sign the agreement to guarantee that the shipowner will meet any obligations of the employer to the seafarer under the SEA, which fall under Parts 1 and 2 of Annex 1 to this MGN, if the employer fails to meet those obligations. The “Model Format for a Seafarer Employment Agreement for an 3 Employed Seafarer” (see Annex 2 to this MGN) accordingly makes provision for both the employer and the shipowner, as well as the seafarer, to sign the SEA.*

*4.4 In every case, both the seafarer and the shipowner must have copies of the SEA signed by all the relevant parties.*

Under a separate provision contained in the model format of the SEA, which shall be completed and signed by the shipowner not being an employer, the shipowner guarantees that:

*(...) in the event of the employer named at (2) above failing, for whatever reason, to meet its obligations to the seafarer named at (1) above under the terms of this Seafarer Employment Agreement I / We\* as shipowner(s) undertake to meet those obligations to that seafarer and at no cost to that seafarer.<sup>449</sup>*

It follows from the above-cited regulation that the seafarer can be employed by another person other than the shipowner. In such a case, the shipowner remains the final responsible party. It is important that the regulation also clearly states that, in such a case, the SEA shall contain information on the shipowner which means that seafarers, in any case, shall have information on the final responsible person – the shipowner.

To meet requirements of the UK Financial Services Authority, the Employers’ Liability Register<sup>450</sup> was established in the UK. The aim of the Register is to assist consumers with employers’ liability claims to trace the correct insurer for their claim. This Act applies also to insurance providers in shipping. Accordingly, every P&I Club subject to regulation in the UK is required to set up an Employers’ Liability Register, the aim of which is to help those seafarers who have suffered injury or illness in the workplace to identify their employer’s liability insurer. The Club’s Employers’ Liability Register includes all vessels insured by the Club. A seafarer can search in the Register for a vessel on which he has served by entering the name of the vessel or its IMO number. A listing on the Register does not constitute an admission of liability on behalf of

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<sup>449</sup> Point (2) and (3), note 2 of a recommended model format for SEA, provided in Annex 2 of Marine Guidance Note, MGN 477 (M), *supra* note 434.

<sup>450</sup> See Information on UK Employers’ liability register (ELR) at <https://www.fca.org.uk/firms/tracing-employers-liability-insurers> Last visited in March 2020.

the Club but merely indicates that the vessel was insured with the Club for the period indicated.<sup>451</sup> This is a very useful tool for seafarers to receive prompt assistance and compensation in respect of their employment in the case where the shipowner fails to meet his obligations.

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<sup>451</sup> Information available at: <https://www.londonpandi.com/our-services/employers-liability-register/> Last visited in March 2020.

## IV The responsible shipowner in standard contracts in shipping

An employment contract, the SEA (also called articles) is the most important document relating to a seafarer's life and work.<sup>452</sup> The written SEA has been required by general maritime law for centuries.<sup>453</sup> As well, the requirement for the SEA to be signed by both parties to the SEA – the seafarer and shipowner, has been well established in maritime labour law.

The MLC also requires that the SEA is signed by both the seafarer and the shipowner or a representative of the shipowner.<sup>454</sup> The above-mentioned seems a clear and obvious requirement. However, in shipping practice, very often there are questions in respect of the signed SEA: who is the shipowner; who signed the SEA or on whose behalf was the SEA signed; and, accordingly, who is the responsible party of all the different corporate entities involved in seafarers' recruitment and placement process?

Nowadays, after the MLC came into force, the answer is hidden in a comprehensive definition of "shipowner" of the MLC:

*(j) 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.*<sup>455</sup>

The starting point is that the registered owner of a ship is the responsible shipowner. The owner of a ship usually being a shipping company, i.e. a legal person, is represented by its employees. If the SEA is signed by the registered owner (or his employees) then it is clear that the responsible shipowner is the registered owner of the ship. However, a ship may often be given in bareboat charter to another person and the employer of the master of crew in such a case is the bareboat charterer. In most cases, the operation of a ship, including recruitment and placement of seafarers, is delegated to another person. On the basis of delegation contract, the other organizations or persons, whomever they are, will obtain the responsibility for seafarers' employment in respect of obligations delegated by the owner of the ship. Qualification of

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<sup>452</sup> D. B. Stevenson, *supra* note 310, p. 216.

<sup>453</sup> D. B. Stevenson, *supra* note 310, p. 216.

<sup>454</sup> Standard A2.1, paragraph 1(a), MLC.

<sup>455</sup> Article II, paragraph 1 (j), MLC.

intermediaries acting as a shipowner for recruitment of seafarers is a problematic question in the maritime industry. These intermediaries or third parties can have different obligations, including having the obligation to sign the SEA on behalf of the shipowner or on behalf of that third party.

The purpose of this Chapter is to analyse the provisions of the standard contracts in shipping in light of the requirements of the MLC of providing clear information on the ultimately responsible shipowner in SEA's. The MLC requirement of the SEA as a primary source of information about the shipowner is analysed first. Analysis of collective bargaining agreements as part of the SEA is also contained in this Chapter. The analysis of delegation of the responsibilities of the shipowner for recruitment and placement to other persons under standard agreements is presented next. To address the issues arising from the coming into force of the MLC, BIMCO has developed a suite of Recommended Additional MLC Clauses for BIMCO contracts (D Annex) which are also covered in the analysis below. The delegation of responsibility for seafarers' labour matters is linked to the questions about joint and several responsibilities of the shipowner and authorised third parties, and on availability of the information on the responsible party for the seafarers, which are addressed below in this Chapter.

#### **4.1. The SEA as a primary source of information about the shipowner**

The requirement to have a written SEA is contained in Convention No. 22, where Article 3 states that:

- 1. Articles of agreement shall be signed both by the shipowner or his representative and by the seaman. Reasonable facilities to examine the articles of agreement before they are signed shall be given to the seaman and also to his adviser.*
- 2. The seaman shall sign the agreement under conditions which shall be prescribed by national law in order to ensure adequate supervision by the competent public authority.*
- 3. The foregoing provisions shall be deemed to have been fulfilled if the competent authority certifies that the provisions of the agreement have been laid before it in writing and have been confirmed both by the shipowner or his representative and by the seaman.*
- 4. National law shall make adequate provision to ensure that the seaman has understood the agreement.*
- 5. The agreement shall not contain anything which is contrary to the provisions of national law or of this Convention.*
- 6. National law shall prescribe such further formalities and safeguards in respect of the completion of the agreement as may be considered necessary for the protection of the interests of the shipowner and of the seaman.*

As well, Article 6 of Convention No.22 needs to be cited:

1. *The agreement may be made either for a definite period or for a voyage or, if permitted by national law, for an indefinite period.*
2. *The agreement shall state clearly the respective rights and obligations of each of the parties.*
3. *It shall in all cases contain the following particulars:*
  - (1) *the surname and other names of the seaman, the date of his birth or his age, and his birthplace;*
  - (2) *the place at which and date on which the agreement was completed;*
  - (3) *the name of the vessel or vessels on board which the seaman undertakes to serve;*
  - (4) *the number of the crew of the vessel, if required by national law;*
  - (5) *the voyage or voyages to be undertaken, if this can be determined at the time of making the agreement;*
  - (6) *the capacity in which the seaman is to be employed;*
  - (7) *if possible, the place and date at which the seaman is required to report on board for service;*
  - (8) *the scale of provisions to be supplied to the seaman, unless some alternative system is provided for by national law;*
  - (9) *the amount of his wages;*
  - (10) *the termination of the agreement and the conditions thereof, that is to say:*
    - (a) *if the agreement has been made for a definite period, the date fixed for its expiry;*
    - (b) *if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the seaman shall be discharged;*
    - (c) *if the agreement has been made for an indefinite period, the conditions which shall entitle either party to rescind it, as well as the required period of notice for rescission; provided that such period shall not be less for the shipowner than for the seaman;*
  - (11) *the annual leave with pay granted to the seaman after one year's service with the same shipping company, if such leave is provided for by national law;*
  - (12) *any other particulars which national law may require.*

Accordingly, Convention No. 22 requires that the SEA is signed by the shipowner or his representative. Although the information on the shipowner is not listed in Article 6, paragraph 3 of Convention No. 22, between particulars to be inserted in the SEA, it shall be concluded that the shipowner is the responsible party to the SEA and the information on the shipowner should be available to the seafarer. Without insertion of the information on the shipowner into the SEA, it would not be possible to ensure protection of seafarers' interests as required by Article 3 of Convention No. 22.<sup>456</sup>

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<sup>456</sup> Article 3, Convention No. 22, *supra* note 169:

1. *Articles of agreement shall be signed both by the shipowner or his representative and by the seaman. Reasonable facilities to examine the articles of agreement before they are signed shall be given to the seaman and also to his adviser.*
2. *The seaman shall sign the agreement under conditions which shall be prescribed by national law in order to ensure adequate supervision by the competent public authority.*
3. *The foregoing provisions shall be deemed to have been fulfilled if the competent authority certifies that the provisions of the agreement have been laid before it in writing and have been confirmed both by the shipowner or his representative and by the seaman.*
4. *National law shall make adequate provision to ensure that the seaman has understood the agreement.*

The MLC, as an international agreement revising Convention No. 22,<sup>457</sup> also establishes standards for the signing of the SEA and the information to be inserted into it.

The MLC defines the SEA in Article II, paragraph 1(g):

*seafarers' employment agreement includes both a contract of employment and articles of agreement;*

According to the ILO, this is an inclusive definition that covers various legal systems and practices, and formats. It specifically includes both a contract of employment and articles of agreement; but there could be other formats, as required under national law or practice.<sup>458</sup>

Regulation 2.1, paragraph 1 of the MLC states:

*The terms and conditions for employment of a seafarer shall be set out or referred to in a clear written legally enforceable agreement and shall be consistent with the standards set out in the Code.*

As well, any applicable collective bargaining agreements may be incorporated in the SEA to the extent compatible with the Member's national law and practice, as provided in Standard A2.1, paragraph 2 of the MLC:

*2. Where a collective bargaining agreement forms all or part of a seafarers' employment agreement, a copy of that agreement shall be available on board. (...)*

The revised version of the requirements contained in Article 3 and Article 6 of Convention No. 22 in respect of the signing of the SEA are included in Regulation 2.1 – *Seafarers' employment agreements* of the MLC (author's underlining):

Standard A2.1 – Seafarers' employment agreements

*1. Each Member shall adopt laws or regulations requiring that ships that fly its flag comply with the following requirements:*

*(a) seafarers working on ships that fly its flag shall have a seafarers' employment agreement signed by both the seafarer and the shipowner or a representative of the shipowner (or, where they are not employees,*

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*5. The agreement shall not contain anything which is contrary to the provisions of national law or of this Convention.  
6. National law shall prescribe such further formalities and safeguards in respect of the completion of the agreement as may be considered necessary for the protection of the interests of the shipowner and of the seaman.*

<sup>457</sup> Article 10, MLC.

<sup>458</sup> ILO publication: FAQ on the MLC, *supra* note 240, p. 36.

*evidence of contractual or similar arrangements) providing them with decent working and living conditions on board the ship as required by this Convention;*

*(b) seafarers signing a seafarers' employment agreement shall be given an opportunity to examine and seek advice on the agreement before signing, as well as such other facilities as are necessary to ensure that they have freely entered into an agreement with a sufficient understanding of their rights and responsibilities;*

*(c) the shipowner and seafarer concerned shall each have a signed original of the seafarers' employment agreement;*

*(d) measures shall be taken to ensure that clear information as to the conditions of their employment can be easily obtained on board by seafarers, including the ship's master, and that such information, including a copy of the seafarers' employment agreement, is also accessible for review by officers of a competent authority, including those in ports to be visited; (...)*

*(...) 4. Each Member shall adopt laws and regulations specifying the matters that are to be included in all seafarers' employment agreements governed by its national law. Seafarers' employment agreements shall in all cases contain the following particulars:*

*(a) the seafarer's full name, date of birth or age, and birthplace;*

*(b) the shipowner's name and address;*

*(c) the place where and date when the seafarers' employment agreement is entered into;*

*(d) the capacity in which the seafarer is to be employed;*

*(e) the amount of the seafarer's wages or, where applicable, the formula used for calculating them;*

*(f) the amount of paid annual leave or, where applicable, the formula used for calculating it;*

*(g) the termination of the agreement and the conditions thereof, including:*

*(i) if the agreement has been made for an indefinite period, the conditions entitling either party to terminate it, as well as the required notice period, which shall not be less for the shipowner than for the seafarer;*

*(ii) if the agreement has been made for a definite period, the date fixed for its expiry; and*

*(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 should be discharged;*

*(h) the health and social security protection benefits to be provided to the seafarer by the shipowner;*

*(i) the seafarer's entitlement to repatriation;*

*(j) reference to the collective bargaining agreement, if applicable; and*

*(k) any other particulars which national law may require. (...)*

Provisions in Convention No. 22 and in the MLC are similar; however, new regulation in the MLC also contains important differences which strengthen the obligation to insert the relevant information about the shipowner into the SEA including the case where the third party is signing the SEA on behalf of the shipowner. It follows from Standard A2.1, paragraph 1 (a) and 1 (c) of the MLC (cited above) that, in such a case, the signed SEA shall contain evidence of the contractual or similar arrangements on the powers of the other person to act as the shipowner's representative.

The purpose of the afore-mentioned provisions is to ensure that the seafarer has information on the responsible shipowner including the case where the SEA is signed on behalf of the

shipowner by a third person. The other provisions of Standard A2.1, paragraph 1<sup>459</sup> of the MLC require to take all measures to ensure that a seafarer has clear information and understanding on the conditions of his employment. The information on the shipowner should mean not only the name of the shipowner or name of his representative but, also, address any other information which could be necessary to identify and contact the shipowner. Information on the responsible shipowner is a very important condition to be included in the SEA. In the case where another person (not an employee of the shipowner) has signed the SEA, full information on the responsible shipowner should also be contained in the SEA. Although it is not directly mentioned in the MLC Standards, the author believes that the purpose of this regulation is to ensure that the information on the responsible person is provided to the seafarer during all periods of operating under the SEA. Accordingly, in case there is a change in the responsible shipowner or a change in the shipowner's contact information during a seafarer's employment, contractual relations stipulate that the seafarer shall be provided with actual information. It is also a general principle under general labour law that the employment contract shall contain information on the employer, i.e. name, registration number and address. Additionally, the MLC aims to provide seafarers with rights as comparable as possible to those generally available to workers ashore.<sup>460</sup>

The above-mentioned is in line with the ILO's view. In respect of the question *Who must sign the SEA?*, it is explained in the ILO publication *Maritime Labour Convention, 2006 – Frequently Asked Questions* that “Except in cases where the applicable national law considers that a particular person, such as the ship's master, has apparent authority to act on behalf of the shipowner, any signatory other than a shipowner should produce a signed “power of attorney” or other document showing that he/she is authorized to represent the shipowner.”<sup>461</sup> It should be reminded that in regard of the comprehensive definition of “shipowner” in the MLC:

*The intention of the drafters of the MLC, 2006 was that there could only be one person – namely, “the shipowner” – who assumes, vis-à-vis each seafarer, all the duties and responsibilities imposed by the Convention on the shipowner. While another person supplying a seafarer to the ship may have concluded an*

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<sup>459</sup> Standard A2.1, paragraph 1 (b), (c), (d), (e), MLC:

(b) seafarers signing a seafarers' employment agreement shall be given an opportunity to examine and seek advice on the agreement before signing, as well as such other facilities as are necessary to ensure that they have freely entered into an agreement with a sufficient understanding of their rights and responsibilities;

(c) the shipowner and seafarer concerned shall each have a signed original of the seafarers' employment agreement;

(d) measures shall be taken to ensure that clear information as to the conditions of their employment can be easily obtained on board by seafarers, including the ship's master, and that such information, including a copy of the seafarers' employment agreement, is also accessible for review by officers of a competent authority, including those in ports to be visited; and

(e) seafarers shall be given a document containing a record of their employment on board the ship.

<sup>460</sup> See: Regulation 4.1., paragraph 4, MLC.

<sup>461</sup> ILO publication: FAQ on the MLC, *supra* note 240, p. 37.

*employment contract with that seafarer and be responsible for implementing that contract, including payment of wages, for example, the shipowner will still have the overall responsibility vis-à-vis the seafarer. Such an employer could therefore only sign the SEA as a representative of the shipowner (assuming that the employer has a signed power of attorney from the shipowner).*<sup>462</sup>

The afore-mentioned does not release from duty the insertion of information on the shipowner in the SEA – on the shipowner as the person with the overall responsibility for seafarers’ employment.<sup>463</sup>

In line with such, Standard A2.1, paragraph 1(a) and (c) of the MLC explicitly requires that there is a written SEA signed by both the shipowner and the seafarer, and in the case where the SEA is signed by a third party representing the shipowner – evidence of contractual or similar arrangements should be enclosed. Moreover, Standard A2.1, paragraph 4(b) of the MLC states that the SEA shall, in all cases, contain the shipowner’s name and address.

These MLC requirements in respect of the SEA are fully implemented in the national laws of Germany, Norway and the UK. But some countries have failed to fully implement this requirement. A detailed example from Denmark national law was given above. The same problem, i.e., the existing legislation is not fully in compliance with the MLC as it does not require the shipowner to sign the SEA in case the other person not shipowner acting as the employer, is indicated by the CEACR in respect of the national law of the Faroe Islands:

*In its previous comment, the Committee requested the Government to clarify who the parties are under Faroese law on the seafarers’ employment agreement and to consider amending the standard form agreement to ensure that seafarers have an original agreement signed by both the seafarer and shipowner or a shipowner’s representative, as required under paragraph 1 of Standard A2.1. (...). In its reply, the Government indicates that any reference to the “seafarer” is based on section 1 in Parliamentary Act No. 4 of 15 January 1988 on seafarers’ conditions of employment etc., as amended by Act No. 133 of 20 December 2016 (Act No. 133), and any reference to the “shipowner” is based on section 1(a) of this Act. The Faroese standard form agreement shall be signed by both parties. Section 2 of the Executive Order No. 43 of 14 May 2013 on the employer’s obligation to conclude a written contract with the seafarer on the conditions of employment provides that the shipowner or the employer or the one acting on behalf of the shipowner or the employer shall, prior to commencing service, conclude a written employment contract with the employee. Subsection 2(4) provides that the employee shall be provided with a copy of the employment contract signed by the employer. The Committee notes the Government’s indication that it has taken the opportunity to revise the standard form agreement, to ensure that it is in conformity with Standard A2.1, paragraph 4(i). While*

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<sup>462</sup> ILO publication: FAQ on the MLC, *supra* note 240, p. 38.

<sup>463</sup> See answers to questions C1.4.p, C2.1.e, C2.1.h, C2.1.i. etc., ILO publication: FAQ on the MLC, *supra* note 240, p. 37.

noting this information, the Committee observes that the existing legislation does not require that the SEA must, in all cases, be signed by the shipowner or a representative of the latter (whether or not the shipowner is considered to be the employer of the seafarer) as required by Standard A2.1, paragraph 1(c). **The Committee accordingly requests the Government to adopt the necessary measures to ensure full compliance with this requirement of the Convention. It further requests the Government to provide a copy of the revised form agreement.**<sup>464</sup>

In respect of the implementation of paragraph 1 of Standard A2.1 of the MLC by France the CEACR noted:<sup>465</sup>

*The Committee recalls that, under the terms of paragraph 1 of Standard A2.1, seafarers shall have an original of the seafarers' employment agreement signed by both the seafarer and the shipowner or a representative of the shipowner irrespective of whether or not the shipowner is considered to be the employer of the seafarer.*

In another example, national law of the Netherlands allows the SEA to be signed by the employer, including a temporary employment agency, and not by the shipowner or a representative of the shipowner as required by the MLC. The Netherlands explained this derogation from MLC standards as a substantial equivalence allowed according to Article VI, paragraph 3 of the MLC.<sup>466</sup>

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<sup>464</sup> See Direct Request (CEACR) - adopted 2019, published 109th ILC session (2020). Maritime Labour Convention, 2006 (MLC, 2006) – Faroe Islands (Ratification: 2016). CEACR note in respect of Regulation 2.1 and Standard A2.1, paragraphs 1 and 4. Seafarers' employment agreement. Content, *supra* note 165.

<sup>465</sup> See Direct Request (CEACR) - adopted 2019, published 109th ILC session (2020). Maritime Labour Convention, 2006 (MLC, 2006) – France (Ratification: 2013). CEACR note in respect of Regulation 2.1 and the Code, *supra* note 165:

*The Committee previously recalled the need to take measures to enable the seafarer to examine the agreement before signing it and to ensure that effect is given to paragraph 1(a) of Standard A2.1 of the MLC, 2006, under the terms of which the agreement shall be signed both by the seafarer and by the shipowner or a representative of the shipowner, whoever the employer may be. (...) With regard to paragraph 1(a) of Standard A2.1, it notes the Government's indication that the name of the shipowner is included on the seafarers' employment agreement, even when the agreement is concluded with an employer who is not a shipowner. The Committee recalls that, under the terms of paragraph 1 of Standard A2.1, seafarers shall have an original of the seafarers' employment agreement signed by both the seafarer and the shipowner or a representative of the shipowner irrespective of whether or not the shipowner is considered to be the employer of the seafarer. **The Committee once again requests the Government to take measures to give effect to this provision of the Convention.***

<sup>466</sup> See Direct Request (CEACR) - adopted 2019, published 109th ILC session (2020). Maritime Labour Convention, 2006 (MLC, 2006) – Netherlands (Ratification: 2011). CEACR note in respect of Regulation 2.1 and Standard A2.1, paragraph 1(a). Seafarers' employment agreements. Signature of seafarer and shipowner or a representative, *supra* note 165:

*Noting that the Netherlands has adopted a substantially equivalent measure allowing seafarers' employment agreements (SEA) to be signed by the employer, including a temporary employment agency, and not by the shipowner or a representative of the shipowner as required by Standard A2.1, paragraph 1(a), the Committee requested the Government to provide further explanations in this regard, in line with Article VI, paragraph 3, of the Convention. The Committee notes the Government's indication that: (i) in practice the shipowner is not always the employer, for instance in the case of a temporary employment agency. According to Dutch law, the employer has to sign the employment agreement because he is party to that contract. If the shipowner is the employer and party to the agreement, he has to sign the contract; (ii) according to the provisions of Dutch law on the seafarers' employment*

From the CEACR's reply, it follows that this cannot be considered substantially equivalent to the requirements of the MLC:

*Recalling the importance of the basic legal relationship that the Convention establishes between the seafarer and the person defined as “shipowner” under Article II of the Convention and the fact that under Standard A2.1, paragraph 1 (a), every seafarer must have an original agreement that is signed by the seafarer and the shipowner or a representative of the latter (whether or not the shipowner is considered to be the employer of the seafarer), the Committee considers that the measures adopted by the Government cannot be considered as substantially equivalent to these requirements of the Convention. Furthermore, seafarers might not be in a position to identify who is the shipowner at the time of signing the SEA and thereby be fully informed of all the circumstances related to the living and working conditions on board. Furthermore, the situation of temporary working agencies and managing owners has been taken into account by the Convention which establishes, under Article II(I)(j), that the shipowner has the responsibility for the operation of the ship and takes the duties and responsibilities imposed on them in accordance with the Convention. The purpose of Standard A2.1, paragraph 1(a), is therefore that seafarers do not have to deal with more than one person or entity with respect to their working and living conditions. **In light of the above, the Committee requests the Government to adopt the necessary measures to amend its legislation in order to ensure full compliance with Standards A2.1, paragraph 1(a), ensuring by the signature of the contract that the shipowner takes responsibility for ensuring conformity of all conditions with the requirements of the MLC, 2006, independently of the person of “employer” from the perspective of contract law.**<sup>467</sup>*

Similar notes by the CEACR were also addressed to Serbia<sup>468</sup> and Sweden.<sup>469</sup>

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*agreement, the person who is regarded as the employer has to fulfil the duties and responsibilities under the Convention, which are set out in Chapter 12 of Book 7 of the Civil Code. The “open” definition of seafarers’ employment agreement implies that the duties and responsibilities of the Convention are applicable to any entity that is to be regarded as employer of the seafarer, whether it is the shipowner or not. The employer is responsible for honouring the obligations in the employment agreement, in particular those relating to the payment of wages and allowances and social protection obligations. The shipowner is liable for other obligations which are of concern to the shipowner rather than to the land-based outside employer as set out in the Seafarers Act (manning and decent and secure accommodation and recreational facilities), without however being part of the employment agreement; (iii) the Government has adopted substantial equivalent measures to ensure that, as a security, in case the employer who is not the shipowner fails to fulfil its obligations towards the seafarer under articles 706 to 709 (wages), 717 to 720 (leave, repatriation, seafarer compensation for the ship’s loss or foundering), 734 to 734I (financial consequences of sickness, injury or death), the shipowner shall nonetheless be liable for these obligations, as provided for in article 7:693 CC (in the case of a temporary employment agency) and article 7:738. This measure is covered by article 69d(2) of the Seafarers Act with respect to the obligations of the managing owner.*

<sup>467</sup> *Ibid.*

<sup>468</sup> See Direct Request (CEACR) - adopted 2019, published 109th ILC session (2020). Maritime Labour Convention, 2006 (MLC, 2006) – Serbia (Ratification: 2013). Regulation 2.1 and the Code. Seafarers’ employment agreements, *supra* note 165.

<sup>469</sup> See Direct Request (CEACR) - adopted 2019, published 109th ILC session (2020). Maritime Labour Convention, 2006 (MLC, 2006) – Sweden (Ratification: 2012). Regulation 2.1 and Standard A2.1, paragraph 1(a). Seafarers’ employment agreements, *supra* note 165.

Between 01 September and 30 November 2016, Paris MoU carried out a Concentrated Inspection Campaign (CIC) on the MLC. During the campaign there was a focus on compliance with the new ILO requirements of the MLC on inspected ships. The results are documented in the *Report of the 2016 Concentrated Inspection Campaign (CIC) on Maritime Labour Convention, 2006*.<sup>470</sup>

Annex 1.3 *Explanatory notes to the questions*, paragraph 4.1. of the report shows that in respect of the question *Do all seafarers have a seafarers' employment agreement?* it was required to check if all seafarers have a SEA signed by both the seafarer and the shipowner or the shipowner's representative. If the SEA was not signed accordingly an answer was "No" and the nature of the defect of the deficiency should be noted as "missing". In 3,576 cases, the answer was "Yes" (97.9 per cent) and in 78 cases the answer was "No" (2.1 per cent).<sup>471</sup> Also, in respect of the question *Are seafarers' employment agreements in compliance with minimum standards required by the MLC?*, it was checked whether or not the SEA was signed by both the seafarer and the shipowner or the shipowner's representative.<sup>472</sup> In 3,425 cases, the answer was "Yes" (93.5 per cent) and in 240 the answer was "No" (6.5 per cent).<sup>473</sup>

In the Campaign, a total of 3,674 inspections were performed and a total of 42 ships were detained in line with the CIC Questionnaire (1.1 per cent of the total). The principal grounds of detentions were linked with:

- wages (23 detentions);
- the seafarer's employment agreement (18 detentions);
- the procedure of complaint (13 detentions).<sup>474</sup>

According to Table 3 *Specification of CIC-topic related deficiencies*, SEA's account for the largest recordings (357).<sup>475</sup> The deficiencies on the SEA are of three types:

- SEA expired;
- SEA missing;

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<sup>470</sup> Report of the 2016 Concentrated Inspection Campaign (CIC) on Maritime Labour Convention, 2006. Available at: <https://www.parismou.org/results-cic-mlc2006-2016> Last visited in March 2020.

<sup>471</sup> *Ibid*, p. 6.

<sup>472</sup> *Supra* note 470, p. 19.

<sup>473</sup> *Supra* note 470, p. 6.

<sup>474</sup> *Supra* note 470, p. 4.

<sup>475</sup> *Supra* note 470, p. 10.

- SEA not properly filled according to MLC minimum requirements.<sup>476</sup>

Following the discovery of deficiencies in SEA's, it was recommended the industry should be reminded that all of the information required by the MLC must be included in the SEA.<sup>477</sup> However, it must be noted that in only 2.1 per cent of all cases was the SEA not signed accordingly and in 6.5 per cent of all cases the SEA was not in compliance with minimum standards required by MLC.<sup>478</sup> These are results only from one port State regime region – the Paris MoU port State regime. Similar information from other port State regime regions is not available.

## **4.2. Delegation of responsibility over seafarers' employment according to standard contracts in shipping**

### ***4.2.1. Demise (or bareboat) charterparty contracts***

Demise charterparty (or 'bareboat' – an expression coined by American oil companies)<sup>479</sup> are the contract, a private contract between two principal parties; the owner and the charterer; and two States, the State of registration of the owner and the flag State of the charterer.<sup>480</sup>

Bareboat charter registration is not regulated by bilateral or multilateral conventions and is dependent on the legal system of the two States – the “flagging-out” State and the “flagging-in” State. Initially, one of the features most attractive to shipowners about the bareboat registration system was that: by “flagging-in” to a country with a low-wage economy they were able to employ crew members of the “flagging-in” State at local rates of pay, thus, escaping the stigma of operating under a flag of convenience and avoiding the possibility of action by the International Transport Workers' Federation<sup>481</sup> (ITF).<sup>482</sup> In many cases, the arrangements are entered into merely to enable savings in crewing costs. Dual or parallel registration systems<sup>483</sup> whereby a vessel

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<sup>476</sup> *Supra* note 470, p. 9.

<sup>477</sup> *Supra* note 470, p. 4.

<sup>478</sup> *Supra* note 470, p. 6, 9.

<sup>479</sup> Ch. Hill, *Maritime law*, 6th ed, London, LLP, 2003, p. 168.

<sup>480</sup> Ch. Hill, *ibid*, p. 168.

<sup>481</sup> More information about ITF is available at: <https://www.itfglobal.org/en>; <https://www.itfseafarers.org/en>

<sup>482</sup> N. P. Ready, *supra* note 28, p. 36.

<sup>483</sup> Pr. K. Mukherjee, M. Brownrigg, *supra* note 2, p. 213.

registered in State A is chartered to the national of state B who, during a charter period, operates the vessel under the flag of their State is a feature of bareboat chartering which allows for ship operators to take advantage of the lower crewing costs in developing countries.

Accordingly, in many cases, notwithstanding bareboat charter arrangements, the vessel remains subject to the control of the owner and often this control is secured by a time charter, back from the purported disponent owner, to a subsidiary of the legal owner.<sup>484</sup>

Article 2, paragraph 8 of UNCCRO's defines the bareboat charter as follows:

*“Bareboat charter” means a contract for the lease of a ship, for a stipulated period of time, by virtue of which the lessee has complete possession and control of the ship, including the right to appoint the master and crew of the ship, for the duration of lease;*

According to the demise charterparty, the charterer takes over the ship and has possession of it together with the right of management and control. The demise charterer is the engager and employer of the Master and crew for the period of the charter. The charterer will also be responsible for victualling and supplying the ship. Thus, the shipowner fades into the background, as it were, and merely collects his hire payments for the period of the charter.<sup>485</sup>

A bareboat charter may occur as either a financial lease (or hire) or as an operational lease. The financial lease is as an alternative to the purchase of a ship and is signed for a ship to be built: the seller being a bank or financier that pays the shipyard, and the buyer being a shipping company or other future operator of the vessel. Such contracts are usually for a long time and may include a purchase option. An operational lease is an agreement by which one active vessel owner lets the vessel to the operator; this type of agreement may occur, for example, because the owner considers the vessel to have served its time with him or because he has a temporally surplus of tonnage, while the operator has a need for it.<sup>486</sup>

The most-often used standard form in the contracting of bareboat charters is the BIMCO standard contract BARECON.<sup>487</sup> According to BIMCO, it is one of BIMCO's most successful and widely used charter parties. The latest edition of this contract is BARECON 2017 (E Annex). Clause 13 (d) of Part II of BARECON 2017 states:

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<sup>484</sup> N. P. Ready, *supra* note 28, p. 36.

<sup>485</sup> Ch. Hill, *supra* note 479, p. 168.

<sup>486</sup> H. Tiberg, J. Schelin, *supra* note 51, p. 70.

<sup>487</sup> M. Davis, *Bareboat Charters*, 2nd ed., London-Singapore, LLP, 2005, p. 20.

*The Charterers shall at their own expense crew, victual, navigate, operate, supply, fuel, maintain and repair the Vessel during the charter period and they shall be responsible for all costs and expenses whatsoever relating to their use and operation of the Vessel, including any taxes and fees. The Crew shall be the servants of the Charterers for all purposes whatsoever, even if for any reason appointed by the Owners.*

A special form of liability is the charterer's obligation to the crew, i.e. his liability in the capacity of the operator for certain costs (for example, liability for damage occurred due to a physical injury or death of a crew member; liability for damage caused to items intended for personal use by a crew member; liability towards a crew member during medical treatment; the obligation to cover the costs of a return trip for crew members (repatriation); or the obligation to compensate for crew members' salaries in the event of a shipwreck).<sup>488</sup> The owner and bareboat charterer both have interest in liability insurance. The charterer's interest in insurance is based on the fact that all liability in respect of the operation of a ship is transferred to the charterer according to the contract. But according to international conventions, including the MLC, the owner or shipowner is still the person responsible for the arrangement of financial insurance.

According to Clause 13 (c) of BARECON 2017, charterers shall maintain a financial security or responsibility in respect of third party liabilities as required by any government. Additionally, it is stated by Clause 32 *Repossession* of Part II of BARECON 2017 that in the case of repossession of the ship following an early termination of the charter party all arrangements and expenses relating to the settling of wages, disembarkation and repatriation of the crew shall be the sole responsibility of the charterers.

Under Clause 22 (a) and (b) of BARECON 2017:

*(a) The Charterers shall indemnify the Owners against any loss, damage or expense arising out of or in relation to the operation of the Vessel by the Charterers, and against any lien of whatsoever nature arising out of an even occurring during the Charter Period. This shall include indemnity for any loss, damage or expense arising out of or in relation to any international convention which may impose liability upon the owners.*

*(b) Without prejudice to the generality of the foregoing, the Charterers agree to indemnify the Owners against all consequences or liabilities arising from the Master, officers or agents signing bills of lading or other documents.*

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<sup>488</sup> M. Pijaca, B. Bulum, "Insurance of Risks under the bareboat Charter Contract", Zbornik PFZ, 67, (1) 85-105 (2017), p. 89. Available at: [file:///E:/Phd/Chapter%20IV\\_Agreements/4\\_M\\_Pijaca\\_B\\_Bulum\\_Zbornik\\_PFZG\\_vol\\_67\\_2017\\_no\\_1.pdf](file:///E:/Phd/Chapter%20IV_Agreements/4_M_Pijaca_B_Bulum_Zbornik_PFZG_vol_67_2017_no_1.pdf) Last visited in March 2020.

BARECON 2017 does not regulate explicitly: who has to sign the SEA alongside seafarers employed on a chartered ship; whether or not a charterer should be included in the SEA information about the owner of the ship; nor joint and several responsibilities in respect of crew claims. But it follows from the above-cited BARECON 2017 clauses that the responsibility in respect of crew employment is delegated to the bareboat charterer, including the rights to contract a crew in its own name and act with all rights and responsibilities of the owner in respect of the employment of crew. An owner's obligation to comply with the standards of the international conventions is delegated to the charterer. Relevant to the research question, thus, the following may be declared: that, taking into account the provisions of BARECON 2017, the bareboat charterer can be considered the final responsible person in respect of seafarers' employment. Although the SEA will not contain information on the registered owner of a ship in this case, it clearly follows from the BARECON 2017 clauses that the bareboat charterer has full responsibility in respect of employed crew. The BIMCO Circular Additional MLC 2006 Clauses for BIMCO Contracts<sup>489</sup> does not contain additional clauses for BARECON 2017 from which it can be concluded that in BIMCO's view the MLC has no effect on parties' obligations under BARECON 2017.

#### ***4.2.2. Ship management and crew management contracts***

Ship management functions may be exercised by the owner (or operator) of a ship (or of a fleet of ships) or be carried out by a third party contracted for such purpose. Although the former may be described as the traditional form of management and operation of ships today, in practice, such an arrangement is rarely encountered outside larger shipping groups and other historic family-run enterprises.<sup>490</sup> Nowadays, ship management functions are usually contracted to professional, independent companies - third parties.

Generally, the management company is a company which provides specialized services for the management of ships which it does not own itself.<sup>491</sup> The content of management agreements varies considerably. Public maritime law does not regulate the content of management contracts, which are solely drawn up by shipping businesses. A broad range of activities are undertaken by

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<sup>489</sup> MLC Clauses for BIMCO Contracts, *supra* note 218.

<sup>490</sup> I. Vella, "Ship management and finance", in *The IMLI manual on international maritime law*, Volume II Shipping Law, 2016, p. 105.

<sup>491</sup> A. E. Branch, D. Branch, (eds.), *Dictionary of shipping. International business trade terms and abbreviations*, London, Witherby, 2005, p. 212.

managers if the entire management of the ship is delegated to them.<sup>492</sup> A typical manager would be a partnership or limited company which would take on the technical management of a ship by which their duties would include manning the vessel and obtaining the necessary supplies. However, some managers provide only crewing management, under special agreements.<sup>493</sup>

In respect of ship and crew management contracts, it should be mentioned that a manager is deemed to be an agent of the shipowner. Under the general law of agency, an agent is a person who has authority from another person, the principal, to represent him or act on his behalf in relation to third persons. In *Siu v Eastern Insurance Co. Ltd.* [1994] 2 AC 199, Lord Lloyd of Berwick observed:

*In the normal way, of course, it is the owners who employ the crew, not their agents. It is commonplace for the agents to engage the crew on behalf of the owners. (...) But it is very rare for the agents to employ the crew.*<sup>494</sup>

There is also the question of tort liability towards third parties. A shipowner's general liability is not imposed upon his manager; but, depending on the circumstances, a manager may be liable under the ordinary rules of negligence.<sup>495</sup>

The complexity of legal relations between the shipowner and the manager can often be a serious burden to the fast and successful identification of the responsible party in respect of the SEA and can have a negative impact on the resolution of a seafarer's claim. Assuming the manager fulfils his duties towards the owner, the former is, at law, entitled to the latter's protection. Moreover, the owner is held to indemnify the manager in relation to mandates. Such protection is, however, only given if the manager makes it clear in his dealing with third parties that he is acting only as the agent and for and on behalf of the owner. Otherwise, the manager will be personally liable towards third parties with whom he contracts, apart from potential liability towards the owner for breach of the agency arrangement.<sup>496</sup>

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<sup>492</sup> A.Mandaraka-Sheppard, *supra* note 40, p. 300:

*For example, they supply all the necessary services on board, they carry out shore supervision, they look after the employment of the ship, arrange for a chain of charterparties, and even provide finance for certain debts.*

<sup>493</sup> A.Mandaraka-Sheppard, *supra* note 40, p. 300.

<sup>494</sup> *Siu v Eastern Insurance Co. Ltd.* [1994] 2 AC 199 at p.206-207), cited in *Ferryways v Associated British Ports* [2008] EWHC 225, paragraph 32, *supra* note 58.

<sup>495</sup> T. Falkanger, L. Brautaset, and H. J. Bull, *supra* note 47, p. 161.

<sup>496</sup> I. Vella, *supra* note 490, p. 107.

Every agency arrangement creates three relationships: one between the principal and agent, another between the principal and the third party, and one between the agent and the third party. If the agent discloses the existence and name of his principal in his dealings with a third party, a direct relationship is established between the principal and the third party.<sup>497</sup> If the information on the principal – the shipowner, is not enclosed in the SEA then according to the law of agency there is no direct relationship between the principal and the seafarer. The seafarer can try to find out this information from other sources and prove that the shipowner is acting as the undisclosed principal.

Very often there are disputes on the agent's status in the contractual arrangement, whether a legal relationship was created between the principal and third party or not, in which case the contractual party is the agent. In the Norwegian Supreme Court Case ND 1993.444 NSC SCAN POWER<sup>498</sup>, the manager was held responsible for the Chief Engineer's claim because the manager had not made clear at the time of engaging the Chief Engineer that he was acting only as an agent, on behalf of another party. In a similar situation, the UK courts in *Ferryways v Associated British Ports* [2008] EWHC 225<sup>499</sup> upheld that the shipowner was acting as the undisclosed principal.

BIMCO has drafted several standard forms of ship and crew management contracts which can be used by parties - SHIPMAN and CREWMAN.<sup>500</sup> The standard ship management agreement, SHIPMAN, covers technical, commercial and crew management. CREWMAN was created only for crew management.

#### 4.2.2.1. *BIMCO standard ship management contract SHIPMAN*

The BIMCO standard ship management contract SHIPMAN has widespread usage. According to both SHIPMAN forms - SHIPMAN 1998 and its latest version SHIPMAN 2009 (F Annex), ship management is divided into three main compartments: crew management, technical management and commercial management. All three aspects of services can be delegated to one managing company or be separately delegated to different companies.

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<sup>497</sup> I. Vella, *supra* note 490, p. 106.

<sup>498</sup> T. Falkanger, L. Brautaset, H.J. Bull, *supra* note 47, p. 161.

<sup>499</sup> *Supra* note 58.

<sup>500</sup> There is also SUPPLYTIME contract to be used for recruitment of personnel working on board the supply vessels, such as geologists and ROV operators. This is specific category of persons to be employed on board. Since the research does not covers specific categories of persons employed on board provisions of SUPPLYTIME contract is not covered by analysis below.

SHIPMAN regulates Manager's and Owner's responsibility in respect of vessel management. The Manager is the person responsible for management services. Where the Manager provides technical management services, they shall agree to be appointed as the Company, assuming the responsibility for the operation of the Vessel and taking over the duties and responsibilities imposed by the ISM Code and the ISPS Code.<sup>501</sup>

According to Clause 3, Part II of SHIPMAN 1998, as well as SHIPMAN 2009, during the period of the agreement the Managers shall carry out services in respect of the Vessel as agents for and on behalf of the Owners:<sup>502</sup>

#### SHIPMAN 2009

##### **3. Authority of Managers**

*Subject to the terms and conditions herein provided, during the period of this Agreement the Managers shall carry out the Management Services in respect of the Vessel as agents for and on behalf of the Owners. The Managers shall have authority to take such actions as they may from time to time in their absolute discretion consider to be necessary to enable them to perform the Management Services in accordance with sound ship management practice, including but not limited to compliance with all relevant rules and regulations.*

##### **(...) 8. Managers' Obligations**

*(a) The Managers undertake to use their best endeavours to provide the Management Services as agents for and on behalf of the Owners in accordance with sound ship management practice and to protect and promote the interests of the Owners in all matters relating to the provision of services hereunder.*

*Provided however, that in the performance of their management responsibilities under this Agreement, the Managers shall be entitled to have regard to their overall responsibility in relation to all vessels as may from time to time be entrusted to their management and in particular, but without prejudice to the generality of the foregoing, the Managers shall be entitled to allocate available supplies, manpower and services in such manner as in the prevailing circumstances the Managers in their absolute discretion consider to be fair and reasonable.*

Accordingly, the Managers shall be under no liability, whatsoever, to the Owners for any loss, damage or expense, of whatsoever nature, arising in the course of the performance of management services; unless, it has resulted solely from the negligence or wilful default of the Manager or their employees, in which case the Manager's liability is limited to the specific amount.<sup>503</sup> Additionally, the Owner shall keep the Manager and their employees, agents and

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<sup>501</sup> Clause 8 (a) Part II of the SHIPMAN 2009.

<sup>502</sup> Clause 3, Clause 8 (a) of Part II of the SHIPMAN 2009.

<sup>503</sup> Clause 17 (b), Part II of the SHIPMAN 2009.

subcontractors identified and to hold them harmless against all actions, proceedings or claims arising out of performance of the SHIPMAN 2009.<sup>504</sup>

The BIMCO MLC Clause for SHIPMAN 1998 and SHIPMAN 2009 contains the following sub-clauses:

*(a) Subject to Clause 3 (Authority of the Managers), the Managers shall, to the extent of their Management Services, assume the Shipowner's duties and responsibilities imposed by the MLC for the Vessel, on behalf of the Shipowner.*

*(b) The Owners shall ensure compliance with the MLC in respect of any crew members supplied by them or on their behalf.*

*(c) The Owners shall procure, whether by instructing the Managers under Clause 7 (Insurance Arrangements) or otherwise, insurance cover or financial security to satisfy the Shipowner's financial security obligations under the MLC.<sup>505</sup>*

Sub-clause (a) cited above is designed in such a way so that the manager is covered by the MLC definition of "shipowner". In accordance with the BIMCO MLC Clause for SHIPMAN the term "shipowner" shall mean the party named as "shipowner" on the MLC Certificate for the Vessel.<sup>506</sup> All four SHIPMAN/CREWMAN MLC 2006 Clauses contain the same definition of "shipowner". To avoid identifying the managers contractually as the "shipowner", which could come into conflict with flag State legislation, the shipowner is defined as the person named on the MLC Certificate issued for the Vessel.<sup>507</sup> Accordingly, with the addition of the BIMCO MLC Clause: in this contract there is: the Owner (the person stated in Box 3, Part 1 of the SHIPMAN); the Manager (the person stated in Box 4, Part I of SHIPMAN); the Company (the person stated in Box 5, Part I of SHIPMAN, with reference to the ISM/ISPS Codes – accordingly, the ISM Company); and the shipowner (a person stated in the MLC certificate). The afore-listed parties can be one person as well as different persons. If they are different persons, all of them have some obligations in respect of the employment of seafarers. Managers, to the extent of their duties under

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<sup>504</sup> Clause 17 (c) Part II of the SHIPMAN 2009:

*(c) Indemnity - Except to the extent and solely for the amount therein set out that the Managers would be liable under Sub-clause 17(b), the Owners hereby undertake to keep the Managers and their employees, agents and subcontractors indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them arising out of or in connection with the performance of this Agreement, and against and in respect of all costs, loss, damages and expenses (including legal costs and expenses on a full indemnity basis) which the Managers may suffer or incur (either directly or indirectly) in the course of the performance of this Agreement.*

<sup>505</sup> Sub-clause (a), BIMCO MLC Clause for SHIPMAN 1998 and SHIPMAN 2009, *supra* note 218.

<sup>506</sup> BIMCO MLC Clause for SHIPMAN 1998 and SHIPMAN 2009, *supra* note 218.

<sup>507</sup> MLC Clauses for BIMCO Contracts, *supra* note 218, p. 3.

SHIPMAN, are responsible on behalf of the shipowner (the person stated as such in the MLC certificate) for the obligations imposed by the MLC. As well, the Manager is still acting as the agent, on behalf of the owner, according to the provisions of SHIPMAN. If the person declared as the owner in SHIPMAN and the person named in the MLC Certificate are different persons, the question is which person is the final responsible person. Under national law it could be the person mentioned in the MLC certificate. However, actually, this status would be more appropriate for the owner stated as such in SHIPMAN. Under the national law of many countries, the status of the MLC shipowner can have an ISM Company; a crew manager; and other persons, which are acting as the agent on behalf of the principal. If the Managers and agents are recognised as the MLC shipowner – the final responsible person under national law, there is doubt if the actual responsible person will be indicated in the SEA. If the financial security for seafarers' claims required by the MLC will be taken on by the owner, then information on the owner will be available for seafarers only from the certificate on financial security placed in a visible place on board.

#### **4.2.2.2. *BIMCO standard crew management agreements CREWMAN A and CREWMAN B***

Selection and engagement of crew may be provided as a separate service by crew manning agencies (also called manning agencies, crewing agencies, manning agents, etc.) – companies that act as intermediaries for recruiting seafarers to work on shipowners' ships. BIMCO standard crew management agreements CREWMAN A and CREWMAN B deal with the specific management of crew.

Under CREWMAN A, an Owner's and Crew Manager's mutual relations in respect of crew management are based on the agency principle. Clause 3, PART II of CREWMAN A 1999 and CREWMAN A 2009 (G Annex) states:

*Subject to the terms and conditions herein provided, during the period of this Agreement, the Crew Managers shall carry out Crew Management Services in respect of the Vessel as agents for and on behalf of the Owners.*  
(...)

Additionally, Clause 6, Part II of CREWMAN A 2009 indicates that Crew Managers undertake to use their best endeavour to provide the crew management services as agents for and on behalf of the owner in accordance with sound crew management practice.

The main principles of Crew Managers' liability are expressed in Clause 12.2, PART II of CREWMAN A 1999 and Clause 14 (b), PART II of CREWMAN A 2009 in identical wording:

*(...) the Crew Managers shall be under no liability whatsoever to the Owners for any loss, damage, delay or expense or whatsoever nature, whether direct or indirect (including but not limited to loss of profit arising out of or in connection with detention of or delay to the Vessel) and howsoever arising in the course of the performance of the Crew Management Services UNLESS same is proved to have resulted solely from the negligence, gross negligence or wilful default of the Crew Managers or any of their employees or agents, or sub-contractors employed by them (...)*

Additionally, Clause 12.4, PART II of CREWMAN A 1999 and Clause 14 (d), PART II of CREWMAN A 2009 state:

*(...) the Owners hereby undertake to keep the Crew Managers and their employees, agents and sub-contractors indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them arising out of or in connection with the performance of the Agreement, and against and in respect of all costs, loss, damages and expense (...) which the Crew Managers may suffer or incur ( either directly or indirectly) in the course of the performance of this Agreement.*

Under BIMCO's MLC Clause for CREWMAN A/ CREWMAN B 1999 and 2009, Managers are acting as agents on behalf of shipowners in respect of the MLC obligations:

*a) The Crew Managers shall, to the extent of their Crew Management Services, ensure compliance with the MLC, on behalf of the Shipowner, in respect of the Crew supplied by the Crew Managers.*

*b) The Owners shall procure, under Clause 8 (Insurance Policies) or otherwise, insurance cover or financial security to satisfy the Shipowner's financial security obligations under the MLC.<sup>508</sup>*

CREWMAN MLC 2006 Clauses contain the same definition of "shipowner" as the MLC Clauses for SHIPMAN, i.e., the term "shipowner" shall mean the party named as "shipowner" on the MLC Certificate for the Vessel. According to BIMCO, this method avoids identifying the Managers contractually as the "shipowner" which may run contrary to flag State legislation.<sup>509</sup>

Under CREWMAN A, parties can agree whose responsibility it will be for the arranging of crew insurance.<sup>510</sup> The BIMCO MLC Clause for CREWMAN A/ CREWMAN B 1999 and 2009 states that the Owners, in accordance with the contract, shall procure insurance coverage or financial security to satisfy the shipowner's financial security obligations under the MLC.<sup>511</sup>

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<sup>508</sup> Sub-clause (a), BIMCO MLC Clause for SHIPMAN 1998 and SHIPMAN 2009, *supra* note 218.

<sup>509</sup> MLC Clauses for BIMCO Contracts, *supra* note 218, p. 3., 6.

<sup>510</sup> Clause 4, Part II, CREWMAN A 1999; Clause 5, Clause 8, Part II CREWMAN A 2009.

<sup>511</sup> Sub-clause (b), BIMCO MLC Clause for SHIPMAN 1998 and SHIPMAN 2009, *supra* note 218.

Also according to CREWMAN A, like in SHIPMAN, there are several persons having obligations in respect of seafarers' employment: the owner (the person stated in Box 3, Part 1 of CREWMAN A); the Crew Manager (the person stated in Box 4, Part I of CREWMAN A); the Company (the entity stated in Box 5, Part I of CREWMAN, with reference to the ISM/ISPS Codes – accordingly, the ISM Company); and the shipowner (the person stated in the MLC Certificate).

The responsibility of the Crew Manager in respect of the signing of the SEA is not mentioned specifically among the functions of Crew Management listed in both forms of CREWMAN A. Since, however, according to the terms of CREWMAN A the Manager is acting as the agent of the owner, it is clear that the SEA should be signed by the Manager as the agent and the final responsible party to the SEA is the owner – the person stated as such in CREWMAN A. The mentioned status of the Crew Manager and the Owner should also be reflected in the SEA in order to have clear information for the seafarer on the employer with the final responsibility (This is now required by Standard A2.1, paragraph 1 (a) of the MLC.). However, this is not always the case.

In *Ferryways v Associated British Ports* [2008] EWHC 225<sup>512</sup>, the claimant – the demise charterer, and the defendant – Crew Manager Ambra Shipmanagement, Limited, Cyprus (“Ambra”), entered into a crew management agreement using the BIMCO CREWMAN A standard form, according to which a crew manager is acting as agent on behalf of the owner. Under the crew management agreement, the Claimant was described as the Owner and Ambra was described as the Crew Manager. The defendant was not stated to be the employer in the SEA or to be the principal of the Crew Manager. The relevant contract of employment was between Ambra as the employer and the Chief Officer as the employee without enclosing the information on the shipowner who the crew manager acted on behalf of. That led to a dispute before the court on: whether the Crew Manager entered into the SEA as agent of the shipowner as expressly provided by the terms of CREWMAN A 1999; and whether the shipowner can be recognised as the undisclosed principal and, accordingly, have the employer's rights and obligations. The claim arose from the death of the Chief Officer, who was supervising loading operations when he was hit by a tug master vehicle being driven by an employee of the port operator. The claimant was entered with the P&I Club as the “senior member” whilst Ambra and the registered owner were “joint members”. Compensation was paid by the P&I Club in respect of death and for the cost of repatriating the body. The claimant, in this case a demise charterer of the Vessel and a member of the Club, claimed to recover those sums from the port operator. One of the issues before the court

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<sup>512</sup> *Ferryways v Associated British Ports*, *supra* note 58.

was this: was the claimant the employer of the Chief Officer? The court stated that if the owner is to receive benefit from the SEA as employer it must, therefore, be as an undisclosed principal and intervention of the undisclosed principal cannot be inconsistent with the terms of the contract.<sup>513</sup> After analysis of the terms of the contract, the court concluded that, although the crew manager is described as the employer, there is no explicit provision that a crew manager is the only person to have rights and obligations of the employer under the SEA; and it follows that the SEA does not exclude the Claimant from being an undisclosed principal.<sup>514</sup>

But again, according to the BIMCO MLC Clause, the Crew Manager is to ensure compliance with the MLC requirements on behalf of the shipowner (the person stated in the MLC Certificate). If the shipowner is different than the owner (as stated in CREWMAN A), then the SEA can contain information on the shipowner (the person in the MLC certificate) and not on the owner (the person who has initial responsibility for the crew and who has delegated its responsibility to the manager). As it was mentioned above, the Crew Manager, itself, can be recognised as the shipowner under the national law of some countries which means that, in such cases, the SEA may contain information only on the Crew Manager without identifying the actual final responsible person.

Legal relations of the Owner and the Crew Manager in respect of crew management in the agreement CREWMAN B (H Annex) are based on a different principle than in agreement CREWMAN A:

*Subject to the terms and conditions herein provided during the period of this Agreement, the Crew Managers shall be the employers of the Crew and shall carry out Crew Management Services in respect of the Vessel in their own name.*<sup>515</sup>

The above-mentioned clause explicitly states that the Crew Managers act, in their own name, as the employers. Additionally, Clause 6,<sup>516</sup> Part II of CREWMAN B 2009 emphasises that

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<sup>513</sup> Paragraph 47 and 48, *Ferryways v Associated British Ports*, supra note 58.

<sup>514</sup> Paragraph 56, 69, 70, *Ferryways v Associated British Ports*, supra note 58.

<sup>515</sup> Clause 3, Part II of CREWMAN B 1999; Clause 3, Part II of CREWMAN B 2009.

<sup>516</sup> Clause 6, Part II, CREWMAN B 2009:

*6. Crew Managers' Obligations*

*The Crew Managers undertake to use their best endeavours to provide the Crew Management Services as principals and not agents in accordance with sound crew management practice, and to protect and promote the interests of the Owners in all matters relating to the provision of services hereunder.*

*Provided, however, that in the performance of their management responsibilities under this Agreement, the Crew Managers shall be entitled to have regard to their overall responsibility in relation to all vessels as may from time to time be entrusted to their management and in particular, but without prejudice to the generality of the foregoing, the*

the Crew Manager undertakes to provide Crew Management Services as principals and not agents. Similarly, as in CREWMAN A, the Crew Manager under CREWMAN B is not liable to the Owner for any loss or damage arising in the course of the performance of Crew Management Services unless there is negligence or wilful default by the Crew Manager.<sup>517</sup> Additionally, the Owner shall keep the Crew Manager indemnified and held harmless against all actions, proceedings and claims in connection with the performance of the Agreement.<sup>518</sup>

Under CREWMAN B, parties can agree upon whose responsibility it will be for the arranging of crew insurance.<sup>519</sup> The BIMCO MLC Clause for CREWMAN A/ CREWMAN B 1999 and 2009 states that the Owner shall procure insurance coverage or financial security in order to satisfy the shipowner's financial security obligations under the MLC.<sup>520</sup> It is explained by BIMCO as in the following:

*The basic requirement under the CREWMAN agreements is that the owners should obtain the necessary insurance cover for the vessel and crew. As described above, the standard P&I cover available from the 13 International Group Clubs has been extended to cover the owners' MLC financial security requirements. Sub-clause (b) therefore simply emphasises the owners' insurance obligations under the CREWMAN agreements.*<sup>521</sup>

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*Crew Managers shall be entitled to allocate available manpower in such manner as in the prevailing circumstances the Crew Managers in their absolute discretion consider to be fair and reasonable.*

<sup>517</sup> Clause 10.2., Part II of CREWMAN B – LUMP SUM; Clause 13 (b), Part II of CREWMAN B 2009:

**13. Responsibilities**

*(...) (b) Crew Managers' liability to Owners Without prejudice to Sub-clause 13(a) the Crew Managers shall be under no liability whatsoever to the Owners for any loss, damage, delay or expense of whatsoever nature, whether direct or indirect (including but not limited to loss of profit arising out of or in connection with detention of or delay to the Vessel) and howsoever arising in the course of performance of the Crew Management Services UNLESS same is proved to have resulted solely from the negligence, gross negligence or wilful default of the Crew Managers or their employees or agents, or sub-contractors employed by them in connection with the Vessel, in which case (save where loss, damage, delay or expense has resulted from the Crew Managers' personal act or omission committed with the intent to cause same or recklessly and with knowledge that such loss, damage, delay or expense would probably result) the Crew Managers' liability for each incident or series of incidents giving rise to a claim or claims shall never exceed a total of six (6) times the monthly lump sum payable hereunder.*

<sup>518</sup> Clause 10.4., Part II of CREWMAN B – LUMP SUM; Clause 13 (d), Part II of the CREWMAN B 2009:

**13. Responsibilities**

*(...) (d) Indemnity Except to the extent and solely for the amount therein set out that the Crew Managers would be liable under Sub-clause 13(b) the Owners hereby undertake to keep the Crew Managers and their employees, agents and sub-contractors indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them arising out of or in connection with the performance of the Agreement, and against and in respect of all costs, loss, damages and expenses (including legal costs and expenses on a full indemnity basis) which the Crew Managers may suffer or incur (either directly or indirectly) in the course of the performance of this Agreement.*

<sup>519</sup> Clause 3.2, Part II, CREWMAN B 1999; Clause 5, Clause 8, Part II CREWMAN B 2009.

<sup>520</sup> Sub-clause (b), BIMCO MLC Clause for SHIPMAN 1998 and SHIPMAN 2009, *supra* note 218.

<sup>521</sup> BIMCO MLC Clause for SHIPMAN 1998 and SHIPMAN 2009, *supra* note 218.

Furthermore, both CREWMAN A and CREWMAN B of the BIMCO MLC Clause contain Sub-clause (a) and (b) as follows:

*(a) The Crew Managers shall, to the extent of their Crew Management Services, ensure compliance with the MLC, on behalf of the Shipowner, in respect of the Crew supplied by the Crew Managers.*

*(b) The Owners shall procure, under Clause 8 (Insurance Policies) or otherwise, insurance cover or financial security to satisfy the Shipowner's financial security obligations under the MLC.<sup>522</sup>*

It is also explained by BIMCO that:

*It had originally been intended to create two separate CREWMAN Clauses to distinguish between the crew-manager acting as agent in the supply of crew versus the manager acting as principal (employer) of the crew. However, since the term "Shipowner" is defined in the Clause as the party named as such on the Maritime Labour Certificate for the vessel it was concluded that there is no need to distinguish between the manager acting as agent or principal in the Clause itself.*

*Sub-clause (a) The MLC obligations are tied to the party named as "shipowner" on the Maritime Labour Certificate, which may vary depending on whether the managers are acting as agents or principals. This is reflected in Sub-clause (a) which aligns the responsibilities of the crew-manager in respect of MLC to the agreed crew management services under CREWMAN (whether that be CREWMAN A or B).<sup>523</sup>*

The definition of "shipowner" in the BIMCO MLC Clause for CREWMAN contracts is the same as in the other BIMCO MLC Clauses – the term "shipowner" shall mean the party named as "shipowner" on the MLC Certificate for the Vessel.<sup>524</sup> If under CREWMAN B, the Crew Manager is acting as the principal in his own name then, in respect of the MLC obligations, the Crew Manager is acting on behalf of the shipowner. The afore-mentioned raises the question: shall the Crew Manager conclude the SEA in his own name, as it follows from the CREWMAN B terms, or on behalf of the shipowner (the person stated in the MLC Certificate). If the Crew Manager himself is recognised as the shipowner under the relevant national law, then the SEA may contain information only on the Crew manager.

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<sup>522</sup> Sub-clause (a), BIMCO MLC Clause for CREWMAN, *supra* note 218.

<sup>523</sup> MLC Clauses for BIMCO Contracts, *supra* note 218, p. 4.

<sup>524</sup> MLC Clauses for BIMCO Contracts, *supra* note 218, p. 3., 6.

### 4.3. Other contracts with third persons

Without previously mentioned persons there can be other intermediaries involved in the selection and engagement of crew (via placement agencies, crewing agencies, manning agents, etc.). Placement agencies have become an accepted and essential component of the maritime industry.<sup>525</sup> The content of the service of these intermediaries varies very much. The basis for providing services to the shipowner is the agreement with the shipowner, or more often – with the Crew Manager. Under SHIPMAN and CREWMAN, the Managers can subcontract their obligations to other persons with prior consent of the Owner. In such a case, the Manager will be fully liable for the due performance of their obligations under the Agreement.<sup>526</sup>

The content of the contracts with these intermediaries depends only on the parties' agreement. Public maritime law does not regulate the content of these contracts. Usually these intermediaries act as agents; what this means is that the principles of general agency law are applicable to these contractual relations.

The requirements for operation of the SRPS were established by Convention No. 9 and revised by Convention No. 179. Under the phrase “recruitment and placement services” in Article 1 (b) of Convention No. 179, there is the attempt to address all forms of intermediaries which could be involved in the business of seafarers' employment:

*(b) the term recruitment and placement service means any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting seafarers on behalf of employers or placing seafarers with employers.*

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<sup>525</sup> D. B. Stevenson, *supra* note 310, p. 215.

<sup>526</sup> Clause 16, Part II, SHIPMAN 2009:

**16. Managers' Right to Sub-Contract**

*The Managers shall not subcontract any of their obligations hereunder without the prior written consent of the Owners which shall not be unreasonably withheld. In the event of such a sub-contract the Managers shall remain fully liable for the due performance of their obligations under this Agreement.*

Clause 13, Part II, CREWMAN A 2009:

**13. Crew Managers' Right to Sub-Contract**

*The Crew Managers shall not have the right to sub-contract any of their obligations hereunder without the prior written consent of the Owners, which shall not be unreasonably withheld. In the event of such a sub-contract, the Crew Managers shall remain fully liable for the due performance of their obligations under this Agreement.*

Clause 12, Part II, CREWMAN B 2009:

**12. Crew Managers' Right to Sub-Contract**

*The Crew Managers shall not have the right to sub-contract any of their obligations hereunder without the prior written consent of the Owners, which shall not be unreasonably withheld. In the event of such a sub-contract, the Crew Managers shall remain fully liable for the due performance of their obligations under this Agreement.*

Convention No. 179 was revised by the MLC.<sup>527</sup> Article II, paragraph 1 h) of the MLC contains the identical definition of “seafarer recruitment and placement service”;

*h) seafarer recruitment and placement service means any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners;*

Accordingly, the status of SRPS under the MLC applies to any person involved in seafarers’ recruiting process on behalf of the shipowner. It can be a crew manager acting on the basis of the CREWMAN contract; as well, it could be a small agency providing separate functions to the shipowner or Crew Manager.

*Requirements for SRPS are contained in Regulation 1.4. of the MLC. Most controversial requirement is contained in Standard A1.4, paragraph 5 (c) (vi) of the MLC:*

*5. A Member adopting a system referred to in paragraph 2 of this Standard shall, in its laws and regulations or other measures, at a minimum:*

*(...) (c) ensure that seafarer recruitment and placement services operating in its territory:*

*(...) (vi) establish a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers’ employment agreement to meet its obligations to them.*

For a small agency providing only separate functions to the shipowner or crew manager, it would be impossible to compensate seafarers’ monetary loss in the case of the shipowner’s failure. Although any SRPS has to make sure, as far as practicable, that the shipowner has the means to protect the seafarers from being stranded in a foreign port,<sup>528</sup> in practice, it does not insure against the shipowner’s insolvency or other reason to meet its obligations. More detailed analysis of this requirement is provided in Chapter 5.3.2. of the thesis.

The MLC does not address the issue of whether or not any of the SRPS can be considered as independent employers – the responsible shipowner or not. The question in respect of the above-mentioned is contained in the fourth edition of the ILO’s Maritime Labour Convention, 2006 – Frequently Asked Questions, and that is, *CI.4.p. When I was recruited to work on a ship, my*

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<sup>527</sup> Article X, MLC.

<sup>528</sup> Standard A1.4, paragraph 5 (c) (iv), MLC.

*employer was a manning agency and they signed my employment contract. Is that acceptable under the MLC, 2006?* The answer from the ILO experts is:

*The answer would depend on whether the seafarer has a seafarers' employment agreement (SEA) that clearly identifies the shipowner as a responsible party under the agreement even if others, such as a manning agency, may also have employment-related responsibilities [see C2.1.e. Can the employer of a seafarer supplying a seafarer to the ship sign the seafarers' employment agreement (SEA) as the shipowner?]. Some countries have developed standard forms for the SEA that allow a shipowner and any other employer to sign as jointly responsible or as guarantor.<sup>529</sup>*

To question C2.1.e. *Can the employer of a seafarer supplying a seafarer to the ship sign the seafarers' employment agreement (SEA) as the shipowner?* ILO experts, referring to the definition of "shipowner" contained in Article II, paragraph 1(j), of the MLC, give the following answer:

*The intention of the drafters of the MLC, 2006 was that there could only be one person – namely, "the shipowner" – who assumes, vis-à-vis each seafarer, all the duties and responsibilities imposed by the Convention on the shipowner. While another person supplying a seafarer to the ship may have concluded an employment contract with that seafarer and be responsible for implementing that contract, including payment of wages, for example, the shipowner will still have the overall responsibility vis-à-vis the seafarer. Such an employer could therefore only sign the SEA as a representative of the shipowner (assuming that the employer has a signed power of attorney from the shipowner).<sup>530</sup>*

The ILO answer only repeats that the SEA shall contain the information on the responsible shipowner but there is no clear answer to the question of SRPS – to if a manning agent can be that responsible shipowner or if information in the SEA on the agent could be enough to fulfil the requirements of Standard A2.1., paragraph 1 (a) and paragraph 4 (b) of the MLC.

#### **4.4. Collective bargaining agreements as a part of SEA's**

In maritime employment relationships, an important role is played by trade unions – seafarers' organizations. Maritime shipping is arguably the most globalized of all industries and also the industry with the most significant transnational union strategy coordination.<sup>531</sup> The

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<sup>529</sup> ILO publication: FAQ on the MLC, *supra* note 240, p. 36.

<sup>530</sup> ILO publication: FAQ on the MLC, *supra* note 240, p. 38.

<sup>531</sup> N. Lillie, *supra* note 62, p. 88.

collective bargaining agreements (CBA), entered into between the employers and employees' organizations, set various restrictions on the content of individual contracts.<sup>532</sup>

Article 4, paragraph 5 of the MLC states that an applicable CBA together with national laws or regulations, other measures or practice is the instrument through which the implementation of seafarers' employment and social rights as set in the MLC can be achieved:

*5. Each Member shall ensure, within the limits of its jurisdiction, that the seafarers' employment and social rights set out in the preceding paragraphs of this Article are fully implemented in accordance with the requirements of this Convention. Unless specified otherwise in the Convention, such implementation may be achieved through national laws or regulations, through applicable collective bargaining agreements or through other measures or in practice.*

The afore-mentioned provision is evidence of the important role of the CBA in implementation of the MLC. Under Regulation 2.1, paragraph 3 of the MLC, to the extent compatible with the Member's national law and practice, the SEA shall be understood to incorporate any applicable CBA, i.e. it forms part of the SEA.<sup>533</sup>

Reference to the CBA, if applicable, shall be inserted into the SEA.<sup>534</sup> A copy of the CBA forming part of the SEA shall be available on board and where the language of the SEA and any applicable CBA is not in English the following shall also be available in English (except for ships engaged only in domestic voyages):

*(a) a copy of a standard form of the agreement; and  
(b) the portions of the collective bargaining agreement that are subject to a port State inspection under Regulation 5.2.<sup>535</sup>*

The interests of seafarers globally are represented by the ITF – an international trade union federation of transport workers' unions. The ITF also represents the interests of seafarers before

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<sup>532</sup> T. Falkanger, L. Brautaset, H.J. Bull, *supra* note 47, p. 243.

<sup>533</sup> See also Standard A1.4 – *Recruitment and placement*, paragraph 5 (c) (iii), MLC:  
*5. A Member adopting a system referred to in paragraph 2 of this Standard shall, in its laws and regulations or other measures, at a minimum:*  
*(...) (c) ensure that seafarer recruitment and placement services operating in its territory:*  
*(...) (iii) verify that seafarers recruited or placed by them are qualified and hold the documents necessary for the job concerned, and that the seafarers' employment agreements are in accordance with applicable laws and regulations and any collective bargaining agreement that forms part of the employment agreement;*

<sup>534</sup> Standard A2.1, paragraph 4 (j), MLC.

<sup>535</sup> Standard A2.1, paragraph 2, MLC.

the ILO and IMO and other international maritime institutions. The ITF has approved different forms of agreements to be signed in respect of seafarers' employment. According to ITF information, ITF Agreements are signed by a maritime union and shipping company, either by the beneficial owner, the operator or the manager of the ship.<sup>536</sup>

The ITF Agreement is composed of the special agreement, the collective bargaining agreement (CBA) and individual employment contracts. The ITF Special Agreement is concluded between ITF and the Company. The Company is the owner/agent of the owner of the Ship described in Schedule 1 hereto.<sup>537</sup> In Schedule 1 the information on the registered owner, beneficial owner, crew/technical manager and manning agent should be inserted.<sup>538</sup> According to its zone of signature, the ITF Special Agreement shall be signed by the Company or other person on behalf of the Company who is duly authorised by the owner of the Ship to sign on its behalf.<sup>539</sup> Under Article 2, paragraph c) of this Agreement, the Company agrees to conclude and maintain in force, for the duration of the Agreement, appropriate insurance to cover all liabilities in the relevant ITF-approved collective bargaining agreements and requirements of Standard A2.5.2 of the MLC.

The ITF Standard CBA 2015 sets out the standard terms and conditions applicable to all seafarers serving on any ship in respect of which there is in existence a Special Agreement made between the Union, an affiliate of the ITF, and the Company who is the owner/agent of the owner of the ship.<sup>540</sup> The Company shall further ensure that signed copies of the applicable ITF approved Agreement (CBA) and of the ITF Special Agreement are available on board in English.<sup>541</sup> The words "Seafarer", "Ship", "Special Agreement", "ITF" and "Company" when used in this Agreement shall have the same meaning as in the Special Agreement.<sup>542</sup> The term "company" is used in the CBA 2015 to refer to all of the responsibilities in respect of employed seafarers. The term "shipowner" is used only once in respect of the following responsibilities:

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<sup>536</sup> See <https://www.itfseafarers.org/en/your-rights/itf-agreements>

<sup>537</sup> Paragraph 2 of the Preamble, TCC Special Agreement template - 2019. Available at: <https://www.itfseafarers.org/en/your-rights/itf-agreements> Last visited in March 2020.

<sup>538</sup> Schedule 1, TCC Special Agreement template – 2019, *ibid*.

<sup>539</sup> TCC Special Agreement template – 2019, *supra* note 537.

<sup>540</sup> Article 1, paragraph 1, ITF Standard CBA 2015. Available at: <https://www.itfseafarers.org/en/your-rights/itf-agreements> Last visited in March 2020.

<sup>541</sup> Article 1, paragraph 3, ITF Standard CBA 2015, *ibid*.

<sup>542</sup> Article 1, paragraph 4, ITF Standard CBA 2015, *supra* note 540.

*Shipowners, in discharging their responsibilities to provide for safe and decent working conditions, should have effective arrangements for the payment of compensation for personal injury. When a claim arises, payment should be made promptly and in full, and there should be no pressure by the shipowner or by the representative of the insurers for a payment less than the contractual amount due under this Agreement. Where the nature of the personal injury makes it difficult for the shipowner to make a full payment of the claim, consideration to be given to the payment of an interim amount so as to avoid undue hardship.*<sup>543</sup>

The ITF Uniform Total Crew Cost CBA<sup>544</sup> is based on the same terms as the ITF Standard CBA 2015. The only difference is that the term “shipowner” is not used at all in the ITF Uniform Total Crew Cost CBA; instead of the term “shipowner”, as in the situation cited above, the term “company” is used in Article 24.5. of the ITF Uniform Total Crew Cost CBA.

Not only the ITF Agreement, but also many other forms of CBA may be used. If the information on the registered owner and beneficial owner are inserted into the CBA, which should be available on board a ship, then this information could also be available to seafarers on board. However, this cannot be an excuse not to indicate the final responsible person in respect of seafarers’ employment in the SEA.

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<sup>543</sup> Article 21 f), ITF Standard CBA 2015, *supra* note 540.

<sup>544</sup> ITF Uniform Total Crew Cost CBA. Available at: <https://www.itfseafarers.org/en/your-rights/itf-agreements>. Last visited in March 2020.

## V Security measures – “safety net”, for seafarers’ claims after the MLC

In the literature about PSC, one can come across the term “safety net” describing a system created to prevent substandard ships from trading on the high seas.<sup>545</sup> The term “safety net” could also be used in reference to a system of security measures available to seafarers for protection of their rights in respect of their employment on board a ship. Safety net in respect of seafarers’ labour conditions on board consists of the following elements:

- 1) Financial security required by the MLC;
- 2) Flag State responsibility;
- 3) Labour supplying responsibility;
- 4) Port State control (PSC);
- 5) Ship arrest.

It is not possible to establish a strict hierarchy between these elements nor to list them starting from the most important to least important; since, these elements are overlapping and interacting at different levels. One can say that financial security required by the MLC is the most important element. But without effective implementation and enforcement of this requirement by the flag States, ships which do not have valid financial security and abandoned seafarers left without wages will remain potential problems in the industry. As it is evident from the shipping practice the control mechanisms applied by the flag State to the ships flying its flag are not sufficient to ensure full compliance with the international standards. Therefore, PSC is necessary. According to Lillie, under the MLC, although national States enforce the standards, they do so not only by themselves as flag States, in response to obligations to international treaties, but also to each other and directly to shipowners as port States. Transnational enforcement machinery no longer looks like (officially) harmonized parallel sovereign systems but more like a globally

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<sup>545</sup> What is the safety net? (...) The safety net has been created to prevent substandard ships from trading on the high seas. It consists of six main elements:

- (i) International Conventions of the IMO;
- (ii) The conventions of the International Labour Organization;
- (iii) Flag State control;
- (iv) Classification societies;
- (v) The marine insurance industry; and
- (vi) Port State control.

See Z. O. Ozcayir, *supra* note 33, p. 93.

integrated network involving various levels of government authority.<sup>546</sup> Although, through the flag State and port State control mechanism seafarers cannot initiate proceedings for compensation against the shipowner, directly, they can trigger an investigation by the appropriate authority in respect of a complaint, leading to: considerable delay in operation of a ship; potential fines, and even detention of a ship; and costs for the shipowner. It is important for effective functioning of seafarers' safety net that all elements are working effectively.

The elements of seafarers' safety net are analysed below in this Chapter addressing them generally as well as, specifically, in respect to the MLC. Maritime labour law is a hybrid in scope, in that: it consists of contractual aspects, on the one hand, and regulatory and administrative aspects on the other<sup>547</sup> (There are three aspects to state regulatory power in maritime shipping: flag States, port States and labour supply States<sup>548</sup>). The discussion on the elements of seafarers' safety net also contains both aspects.

### **5.1. MLC requirements on financial security and P&I Insurance**

The majority of shipowners' liability, including their liability for seafarers' claims, is insured by P&I insurance, obtained through P&I clubs – mutual insurance societies, whereby the members (shipowners) insure one another on an indemnity basis for a variety of third party liabilities relating to the use and operation of ships.<sup>549</sup> Liability cover (protection and indemnity) for approximately 90 per cent of the world's ocean-going tonnage is provided by an international group of P&I clubs, the unincorporated association of the 13 principal underwriting Associations (Clubs) and their Affiliated Associations and Reinsured Entity.<sup>550</sup>

Generally, marine liability insurance is voluntary and subject to freedom of contract. Additionally, claims for compensation in respect of the crew following death; illness; or injury, including, for example, hospital or medical treatment; and repatriation expenses were traditionally

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<sup>546</sup> N. Lillie, "The ILO maritime labour convention, 2006: A new paradigm for global labour rights implementation", in *Cross border social dialogue and agreements: An emerging global industrial relations framework?*, K. Papadakis, (ed.), Geneva: International Labour Office, United Nations, 2008, p. 196.

<sup>547</sup> Pr. K. Mukherjee, *supra* note 63, p. 187.

<sup>548</sup> N. Lillie, *supra* note 546, p. 198.

<sup>549</sup> M. Pavliha, A.V. Padovan, "Law of Maritime Insurance", in *The IMLI Manual on International Maritime Law Volume II Shipping Law*, D. Attard, M. Fitzmaurice, I. Arroyo, N. Martinez, E. Belja, (eds.), Oxford University Press, 2016, p. 589.

<sup>550</sup> See <https://www.igpandi.org> Last visited in March 2020.

covered by P&I insurance, before the MLC.<sup>551</sup> Under the national law of many countries implementing the requirement of the MLC for financial security in respect of seafarers' abandonment and long-term disability of seafarers due to an occupational injury, illness or hazard, P&I insurance for these matters became a statutory obligation. By the MLC amendments 2014 a compulsory insurance was coupled with the right of direct action of the seafarer against the insurer of the shipowner's liability. The MLC changed a commercial necessity for P&I insurance to the statutory requirement in respect of seafarers' claims. Accordingly, since application of the MLC and especially since application of the MLC amendments 2014 the relationships of the insurer and the insured in respect of potential seafarers' claims are governed, not only by the terms and conditions of the insurance contract, but also, by the MLC and applicable national law implementing the MLC.

This Subchapter addresses the effect of the MLC and its amendments to the scope of P&I cover, and liability of the shipowner and insurer towards seafarers' claims; as well, specific issues on P&I insurance cover for seafarers' claims will be discussed, taking into account the research question.

#### ***5.1.1. Requirement on financial security in the original version of the MLC***

The original version of the MLC contains a requirement to provide financial security for seafarers' repatriation and for financial support to seafarers in case of sickness, injury or death occurring in connection with their employment.

In respect of seafarers' repatriation, Regulation 2.5, paragraph 2 of the MLC states:

*2. Each Member shall require ships that fly its flag to provide financial security to ensure that seafarers are duly repatriated in accordance with the Code.*

Regulation 2.5 of the MLC deals with repatriation and consolidates the obligations in the Repatriation of Seafarers Convention (Revised), 1987 (No. 166). This provision was included in the draft convention by the PTMC since there were serious concerns about repatriation expressed in PTMC Meetings, as well as in the discussions within the framework of the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation regarding Claims for Death, Personal

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<sup>551</sup> B. Farthing, M. Brownrigg, *Farthing on international shipping*, London, LLP Limited, 1997, p. 32.

Injury and Abandonment of Seafarers.<sup>552</sup> The wording of this provision in the proposed Convention was adopted without changes by the 94th (Maritime) Session of the ILO in 2006.<sup>553</sup> Although shipowners are responsible for repatriation expenses for all seafarers on their ships, paragraph 5 of Standard A2.5 of the MLC recognises their right to recover costs from others that may have contractual responsibility to them for these costs.<sup>554</sup>

A second type of financial security is required by paragraph 1 (b) of Standard A4.2.1<sup>555</sup> of the MLC:

*1. Each Member shall adopt laws and regulations requiring that shipowners of ships that fly its flag are responsible for health protection and medical care of all seafarers working on board the ships in accordance with the following minimum standards:*

*(...) (b) shipowners shall 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, as set out in national law, the seafarers' employment agreement or collective agreement.*

These provisions are intended to address shorter term social security protection coverage, currently found in the Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55), and the Social Security (Seafarers) Convention (Revised), 1987 (No. 165). The wording of the first two subparagraphs of Standard A4.2 of the MLC was resolved at the Tripartite Intersessional Meeting on the Follow-up to the PTMC, 21-27 April 2005 where a tripartite consensus was reached on the wording which is set out in the proposed Convention in subparagraphs (a) and (b) of Standard A4.2. In particular, instead of the previous term "insurance coverage", the obligation was linked to the broader concept of *financial security*, which also

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<sup>552</sup> Reports and documents submitted to the 94th (Maritime) Session of the International Labour Conference, Geneva, 7-23 February 2006, Report I (1A) - Adoption of an instrument to consolidate maritime labour standards, p. 37, Note 23 (Regulation 2.5), *supra* note 5.

<sup>553</sup> Conference Session documents of the 94th (Maritime) Session of the International Labour Conference, Geneva, 7-23 February, 2006, Report of the Committee of the Whole, p. 7/58, paragraph 481, *supra* note 5.

<sup>554</sup> Standard A2.5, paragraph 5, MLC:

*5. If a shipowner fails to make arrangements for or to meet the cost of repatriation of seafarers who are entitled to be repatriated:*

*(a) the competent authority of the Member whose flag the ship flies shall arrange for repatriation of the seafarers concerned; if it fails to do so, the State from which the seafarers are to be repatriated or the State of which they are a national may arrange for their repatriation and recover the cost from the Member whose flag the ship flies;*

*(b) costs incurred in repatriating seafarers shall be recoverable from the shipowner by the Member whose flag the ship flies;*

*(c) the expenses of repatriation shall in no case be a charge upon the seafarers, except as provided for in paragraph 3 of this Standard.*

<sup>555</sup> Standard A4.2– *Shipowners' liability* according to the original version of the MLC.

includes insurance coverage.<sup>556</sup> The wording of this provision in the proposed Convention was adopted without changes by the 94<sup>th</sup> (Maritime) Session of the ILO in 2006.<sup>557</sup>

No further criteria or guidelines in respect of the implementation of these financial securities were provided by the original version of the MLC. Accordingly, it raised the discussion about what is meant by a financial security and how this requirement should be implemented properly, in practice.<sup>558</sup> The 2001 IMO/ILO guidelines, mentioned below, are available on this subject but only as guidelines; they were not mandatory.

### **5.1.2. MLC amendments 2014 on financial security for seafarers' abandonment**

The origins of the principles embodied in the first of the MLC amendments go back many years before their adoption in 2014 and coming into force on 18 January 2017.

The proposals for the MLC amendments 2014 were built upon the 2001 IMO/ILO guidelines<sup>559</sup>: IMO Resolution A.930(22) *Resolution and Guidelines on Provision of Financial Security in Case of Abandonment of Seafarers*, adopted on 29 November 2001,<sup>560</sup> and IMO Resolution A.931(22), adopted on 29 November 2001, *Resolution and Guidelines on Shipowners' Responsibilities in respect of Contractual Claims for Personal Injury or Death of Seafarers*.<sup>561</sup>

The 94th (Maritime) Session of the ILC, which also adopted the MLC, noted that the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers (the Joint IMO/ILO Working Group) found that there was a gap in the international legal regime addressing the issue on the protection of seafarers in cases of abandonment and in respect of contractual claims for personal injury and

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<sup>556</sup> Reports and documents submitted to the 94th (Maritime) Session of the International Labour Conference, Geneva, 7-23 February 2006, Report I (1A) - Adoption of an instrument to consolidate maritime labour standards, p. 42, Note 30 (Regulation 4.2), *supra* note 5.

<sup>557</sup> Conference Session documents of the 94th (Maritime) Session of the International Labour Conference, Geneva, 7-23 February 2006, Report of the Committee of the Whole, p. 7/82, paragraph 760, *supra* note 5.

<sup>558</sup> See Panama opinion at the first meeting of the Special Tripartite Committee (Geneva, 7-11 April 2014), Summary of observations and suggestions on the two sets of joint proposals for amendments to the Code of the Maritime Labour Convention, 2006, STCMLC/2014/1, paragraph 9, *supra* note 236.

<sup>559</sup> Background paper for discussion at the first meeting of the Special Tripartite Committee (7-11 April 2014), STCMLC/2014, paragraph 16, *supra* note 236.

<sup>560</sup> *Guidelines on Provision of Financial Security in Case of Abandonment of Seafarers*, *supra* note 116.

<sup>561</sup> *Guidelines on Shipowners' Responsibilities in respect of Contractual Claims for Personal Injury or Death of Seafarers*, adopted on 29 November 2001, IMO Resolution A.931(22). Available at: [http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Assembly/Documents/A.931\(22\).pdf](http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Assembly/Documents/A.931(22).pdf) Last visited in March 2020.

death; and considering that the text in the MLC does not address many of the provisions set out in the 2001 IMO/ILO guidelines, it was recommended to develop “a standard accompanied by guidelines, which could be included in the MLC, 2006, or another existing instrument, at a later date.”<sup>562</sup> The Ninth Session of the Joint IMO/ILO Working Group in March 2009 agreed on the principles for the proposals for the amendments.<sup>563</sup> The Joint IMO/ILO Working Group recommended that:

- (a) the principles embodied in the draft texts, contained in Appendices I and II to the Joint IMO/ILO Working Group report, should be considered as a basis for finalizing a mandatory instrument or instruments;*
- (b) an amendment to the MLC, 2006, was the best way to create such a mandatory instrument or instruments.*<sup>564</sup>

At its first meeting in September 2010, the Preparatory Tripartite MLC Committee (“the Preparatory Committee”)<sup>565</sup> identified the need for the international legal regime addressing the issue on protection of seafarers in case of abandonment and in respect of contractual claims for personal injury and death as urgent matters to be considered by the first meeting of the Special Tripartite Committee to be established under Article XIII of the MLC, when it came into force.<sup>566</sup> The first set of proposals, submitted jointly by the shipowners’ and seafarers’ representatives to

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<sup>562</sup> See Resolution concerning the Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers, in Resolutions adopted by the International Labour Conference at its 94th (Maritime) Session, ILO, 2006. Available at: [https://www.ilo.org/global/standards/maritime-labour-convention/WCMS\\_088130/lang--en/index.htm](https://www.ilo.org/global/standards/maritime-labour-convention/WCMS_088130/lang--en/index.htm) Last visited in March 2020.

<sup>563</sup> See Final report – Joint IMO/ILO Ad Hoc Expert Working Group on Liability and Compensation Regarding Claims for Death, Personal Injury and Abandonment of Seafarers, Geneva, 2–6 March 2009, ILO/IMO/WGPS/9/2009/10. Available at: [https://www.ilo.org/sector/activities/sectoral-meetings/WCMS\\_161208/lang--en/index.htm](https://www.ilo.org/sector/activities/sectoral-meetings/WCMS_161208/lang--en/index.htm) Last visited in March 2020.

<sup>564</sup> *Ibid*, paragraph 157.

<sup>565</sup> The Governing Body of the ILO, at its 306th Session, noting that the MLC, 2006 is expected to come into force during 2011, decided to establish a Preparatory Tripartite MLC, 2006, Committee (“the Preparatory Committee”), modelled on the future “Special Tripartite Committee” to be established under Article XIII of the MLC, 2006, when it comes into force.

<sup>566</sup> Final report of the Preparatory Tripartite MLC, 2006, Committee - Geneva, 20-22 September 2010, PTMLC/2010/4, paragraph 87-92, *supra* note 236; Appendix paragraph 3; Background paper for the Preparatory Tripartite MLC, 2006, Committee - Geneva, 20-22 September 2010, PTMLC/2010, paragraph 55, *supra* note 236: *Once the Special Tripartite Committee has been established, one urgent action will involve the review and consideration of the principles agreed at the Ninth Session of the Joint IMO–ILO Working Group, mentioned above in paragraphs 50 and 51, with a view to assessing, first, whether or not these principles could take the form of amendments to the Code of the MLC, 2006 and, if so, proposing a draft text for amendments, in accordance with Article XV of the MLC, 2006. Since the first question (concerning what is included in the Code) is likely to depend on a substantive discussion of the principles themselves, and since they have been thoroughly discussed at the preparatory level, it would seem appropriate to leave this to the Special Tripartite Committee without any need for further preparatory work.*

the Special Tripartite Committee in April 2011, was intended to better address the specific problems faced in cases of abandonment of seafarers, by amending Regulation 2.5 of the MLC. Although all seafarers are entitled to coverage for repatriation, which is secured by the requirement in the MLC, there is the concern that, in practice, the needs of seafarers who are abandoned are not adequately covered under existing mechanisms and provisions.<sup>567</sup>

The second set of proposals, submitted jointly by the shipowners' and seafarers' representatives to the Special Tripartite Committee in April 2011, elaborates the existing requirement in Standard A4.2, paragraph 1(b) of the MLC requiring for shipowners to provide financial security to assure compensation in the event of death or long-term disability of a seafarer due to occupational injury, illness or hazard. In light of the ongoing work of the Joint IMO/ILO Working Group, the details of this financial security and related issues were not dealt with in 2006 when the MLC was adopted.<sup>568</sup>

By the MLC amendments 2014 *Regulation 2.5– Repatriation* was amended to add a new Standard - *Standard A2.5.2 – Financial security* (for full text of the MLC amendments 2014 see Annex A). As it is stated in paragraph 1 of the new Standard A2.5.2 of the MLC, the Standard in implementation of Regulation 2.5, paragraph 2 on the requirement for financial security establishes the requirement to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event of their abandonment.

The new Standard establishes requirements in respect of the form of financial security. The financial security system may be in the form of: a social security scheme, insurance, a national fund or other similar arrangements.<sup>569</sup> Although there are several options allowed, in practice, P&I insurance is usually used to ensure compliance with this requirement. A new Appendix A2-I added by the MLC amendments 2014 prescribes information to be contained in the certificate or other documentary evidence of financial security (I Annex), including all relevant information for successful protection of seafarers' claims – name and address of the provider or providers of the financial security and contact details of the persons or entity responsible for handling seafarers' contractual claims, which shall all be in English or accompanied by an English translation and posted in a conspicuous place on board where it is available to the seafarers.<sup>570</sup>

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<sup>567</sup> Background paper for discussion at the first meeting of the Special Tripartite Committee (7-11 April 2014), STCMLC/2014, paragraph 15, *supra* note 236.

<sup>568</sup> Background paper for discussion at the first meeting of the Special Tripartite Committee (7-11 April 2014), STCMLC/2014, paragraph 34, *supra* note 236.

<sup>569</sup> Standard A2.5.2., paragraph 3, MLC amendments 2014.

<sup>570</sup> Standard A2.5.2, paragraph 6, MLC amendments 2014:

In respect of the content of the MLC amendments 2014, they considerably expand and, at the same time, concretize the cover of financial security for repatriation. It is stated by paragraph 1 of the new Standard A2.5.2 of the MLC that the financial security shall ensure that seafarers are duly repatriated and assist seafarers in the event of their abandonment. A seafarer shall be deemed to have been abandoned where the shipowner is in violation of the terms of the SEA and the requirements of the MLC:

- (a) fails to cover the cost of the seafarer's repatriation; or*
- (b) has left the seafarer without the necessary maintenance and support; or*
- (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.<sup>571</sup>*

It clearly follows that any of the criteria can be involved separately. Criteria in paragraph (b) or (c) are granting rights to claim financial assistance provided by the financial security also without need for repatriation, as it is understood traditionally, i.e., the need to send a seafarer to their home country. Accordingly, financial security, which was initially foreseen for seafarers' repatriation, since the MLC amendments 2014 came into force, has to also ensure financial assistance to seafarers in the case of failure of the shipowner to pay wages for two months or to provide the necessary maintenance and support even if the repatriation in these situations is not required. As it was pointed out by Spain at the first meeting of the Special Tripartite Committee (Geneva, 7–11 April 2014), the proposed financial security system goes beyond ensuring that seafarers are duly repatriated. While there could be a link between the failure to pay wage and repatriation, the right of repatriation would only apply for so long as the seafarer is away from his or her residence and country.<sup>572</sup>

The MLC amendments 2014 also prescribe that the cost of repatriation shall cover: travel by appropriate and expeditious means, normally by air; and include provision for food and accommodation of the seafarer from the time of leaving the ship until arrival at the seafarer's

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*Each Member shall require that ships that fly its flag, and to which paragraph 1 or 2 of Regulation 5.1.3 applies, carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.*

<sup>571</sup> Standard A2.5.2., paragraph 2, MLC amendments 2014.

<sup>572</sup> See considerations by Spain at the first meeting of the Special Tripartite Committee (Geneva, 7–11 April 2014). Summary of observations and suggestions on the two sets of joint proposals for amendments to the Code of the Maritime Labour Convention, 2006. STCMLC/2014/1, paragraph 21, *supra* note 236.

home; necessary medical care; passage and transport of personal effects; and any other reasonable costs or charges arising from the abandonment.<sup>573</sup> Necessary maintenance and support of seafarers shall include: adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care.<sup>574</sup> Additionally, assistance provided by the financial security system shall be sufficient to cover the following:

*(a) outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements;*

*(b) all expenses reasonably incurred by the seafarer, including the cost of repatriation referred to in paragraph 10; and*

*(c) the essential needs of the seafarer including such items as: adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel for survival on board the ship, necessary medical care and any other reasonable costs or charges from the act or omission constituting the abandonment until the seafarer's arrival at home.<sup>575</sup>*

An important requirement is that the financial security system shall provide direct access to any seafarer whose abandonment can be supported by the necessary justification to the entitlement.<sup>576</sup>

The MLC amendments 2014 regulate a termination of insurance contract. The financial security for repatriation shall not be terminated before the end of the period of validity of the financial security without prior notification of at least 30 days submitted by the financial security provider to the competent authority of the flag State.<sup>577</sup> A typical rights of insurance contract – subrogation, assignment or otherwise, is granted to the insurer which has made any payment to any seafarer according to the MLC amendments 2014.<sup>578</sup>

Similarly, Regulation 4.2 – *Shipowners' liability* of the MLC was amended by amending the original Standard A4.2 – *Shipowners' liability* and inserting a new Standard A4.2.2 – *Treatment of contractual claims* (for full text of the MLC amendments 2014 see Annex A). The

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<sup>573</sup> Standard A2.5.2, paragraph 10, MLC amendments 2014.

<sup>574</sup> Standard A2.5.2, paragraph 5, MLC amendments 2014.

<sup>575</sup> Standard A2.5.2, paragraph 9, MLC amendments 2014.

<sup>576</sup> Standard A2.5.2, paragraph 4, MLC amendments 2014.

<sup>577</sup> Standard A2.5.2, paragraph 11, MLC amendments 2014.

<sup>578</sup> Standard A2.5.2, paragraph 12, MLC amendments 2014.

system of financial security may be in the form of a social security scheme, insurance, fund or other similar arrangements.<sup>579</sup> Information to be contained in the certificate *Evidence of financial security under Regulation 4.2* is listed in a new Appendix A4-I added by the MLC amendments 2014 (J Annex). A copy of the certificate in English or with English translation, including all relevant information for successful protection of seafarers' claims, shall be posted on board where it is available to the seafarer.<sup>580</sup>

The cover of this financial security is specified using the term "contractual claims" which means any claim which relates to death or long-term disability of a seafarer due to an occupational injury, illness or hazard as set out in national law, the seafarers' employment agreement or the collective agreement.<sup>581</sup> Under Paragraph 8 of the new Standard A4.2.1, MLC, the system of financial security for contractual claims shall meet the following minimum requirements, including ensuring that seafarers have direct access to the provider of financial security:

*(a) the contractual compensation, where set out in the seafarer's employment agreement and without prejudice to subparagraph (c) of this paragraph, shall be paid in full and without delay;*

*(b) there shall be no pressure to accept a payment less than the contractual amount;*

*(c) where the nature of the long-term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled, an interim payment or payments shall be made to the seafarer so as to avoid undue hardship;*

*(d) in accordance with Regulation 4.2, paragraph 2, the seafarer shall receive payment without prejudice to other legal rights, but such payment may be offset by the shipowner against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident; and*

*(e) the claim for contractual compensation may be brought directly by the seafarer concerned, or their next of kin, or a representative of the seafarer or designated beneficiary.*

The competent authority of the flag State shall be notified by the provider of the financial security for contractual claims if a shipowner's financial security is cancelled or terminated.<sup>582</sup> The financial security for contractual claims shall not cease before the end of the period of validity of

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<sup>579</sup> Standard A4.2.2, paragraph 1, MLC amendments 2014.

<sup>580</sup> Standard A4.2.1, paragraph 11, MLC amendments 2014:

*11. Each Member shall require that ships that fly its flag carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.*

<sup>581</sup> Standard A4.2.2, paragraph 2, MLC amendments 2014.

<sup>582</sup> Standard A4.2.1, paragraph 10, MLC amendments 2014.

the financial security; unless, the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.<sup>583</sup> Also seafarers shall receive prior notification if a shipowner's financial security for contractual claims is to be cancelled or terminated.<sup>584</sup> However, it is not specified, in this case, by the Convention who is responsible for notification of the seafarers.

An insurance or an equivalent measure is only a further layer of protection for the seafarer faced with the potential difficulties of identifying and claiming from the responsible party.<sup>585</sup> However, effective insurance cover is a very important instrument for abandoned seafarers and the unsuccessful functioning of it leaves seafarers without sufficient protection as well as undermines the authority of international regulation.

### ***5.1.3. Seafarers' abandonment cases after the MLC amendments 2014***

The report on cases of abandonments reported by the ITF to the Third Meeting of the Special Tripartite Committee of the MLC, 2006, (Geneva 23-27 April 2018) of the IMO/ILO joint database of abandonment of seafarers for a period of one year since the entry into force of the MLC amendments 2014 on 18 January 2017 and till 7 February 2018 contains conclusions referring to problems for full implementation of the MLC amendments 2014 in the first year:

#### *Conclusions*

*18. This is the first year of a new requirement and there have clearly been problems in fully implementing the regulation. It would appear that there are insufficient mechanisms in place to ensure that vessels cannot trade without valid abandonment insurance. Whilst the definition of abandonment is quite clear, the circumstances surrounding abandonment and the relationships between flag state, shipowners, their insurers and other entities with a commercial interest in the vessel are extremely varied.*

*19. In a number of cases P&I clubs have responded promptly to applications and discharged their obligations as intended. In some cases the intervention of the insurer has resulted in the shipowner finding the resources to pay and repatriate seafarers. In other cases insurers have appeared unaware of their responsibilities, in spite of having issued certificates referencing regulation 2.5.2, and have either disputed the agreed definition of abandonment or deferred to the shipowner.*

*20. Seafarers should not be expected to endure the impoverishment and indignity of repeated nonpayment of wages whilst stranded in a foreign port. In all cases of abandonment the protection of seafarers should come*

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<sup>583</sup> Standard A4.2.1, paragraph 12, MLC amendments 2014.

<sup>584</sup> Standard A4.2.1, paragraph 12 MLC amendments 2014.

<sup>585</sup> M. L. McConnell, *supra* note 306, 123.

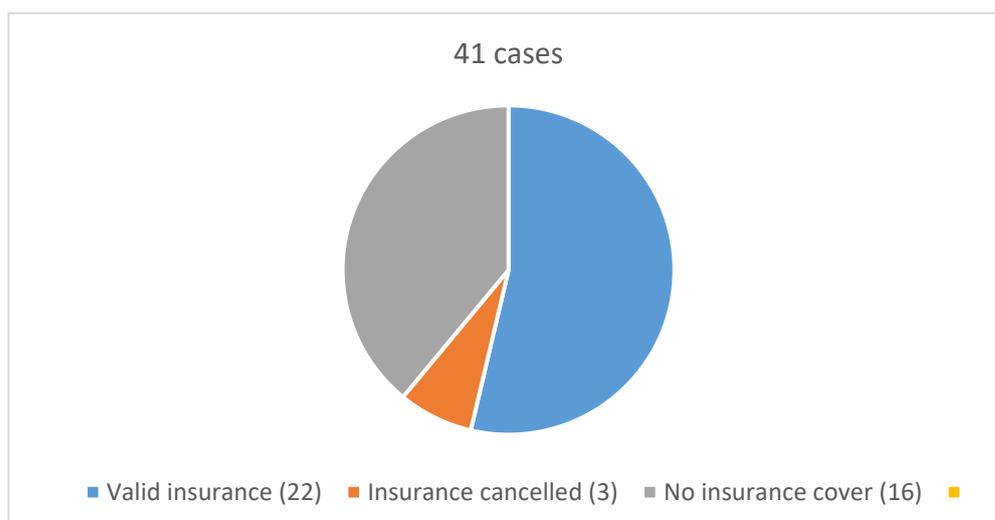
*first. Whilst there are some positive examples of the insurance facilitating a resolution to cases of abandonment, overall the lengths of time involved are wholly unacceptable.*<sup>586</sup>

According to the ITF report 2018, the relationships between flag State, shipowners, their insurers and other entities with a commercial interest in the vessel are extremely varied and need to be improved.<sup>587</sup>

According to the ITF report 2018:

*10. Of the 55 cases listed, 75% (41) were flying flags of vessels that have ratified the MLC, 2006 and have accepted the entry into force of the 2014 amendments. Five were flying flags that have ratified the MLC, 2006 but have not yet indicated acceptance of the amendments and nine were flying flags that have not ratified the MLC, 2006.*<sup>588</sup>

**Graphic 1. Cases of abandonment, where insurance was required under the MLC, for a period of 1 year since 18 January 2017 according to the IMO/ILO joint database.**<sup>589</sup>



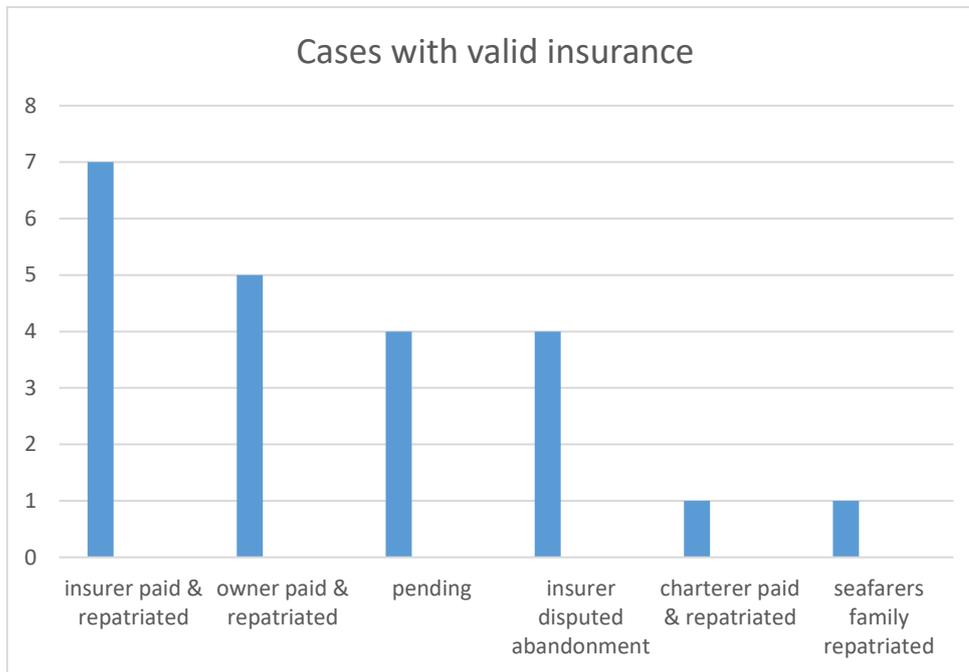
<sup>586</sup> See Information paper submitted by the ITF on behalf of the Seafarers Group to the Third Meeting of the Special Tripartite Committee of the MLC, 2006 (Geneva 23-27 April 2018), p. 9-10, *supra* note 236.

<sup>587</sup> See Information paper submitted by the ITF on behalf of the Seafarers Group to the Third Meeting of the Special Tripartite Committee of the MLC, 2006 (Geneva 23-27 April 2018), p. 9-10, *supra* note 236.

<sup>588</sup> See Information paper submitted by the Seafarers Group to the Third Meeting of the Special Tripartite Committee of the MLC, 2006 (Geneva 23-27 April 2018), p. 6, *supra* note 236.

<sup>589</sup> Information paper submitted by the Seafarers Group to the Third Meeting of the Special Tripartite Committee of the MLC, 2006 (Geneva 23-27 April 2018), p. 7, *supra* note 236.

**Graphic 2. Cases with valid insurance for a period of 1 year since 18 January 2017 according to the IMO/ILO joint database.** <sup>590</sup>



As of January 2020, the abandonment of seafarers remains a serious issue. This statement is contained in the *Report on the IMO/ILO joint database of abandonment of seafarers* submitted by the ILO and IMO Secretariats to the 107th session of the IMO Legal Committee 16-20 March, 2020.<sup>591</sup> This document provides a report on the IMO/ILO joint database of abandonment of seafarers for the period 1 January to 13 December 2019.<sup>592</sup>

The situation with all abandonment cases from 2004 to December 2019 registered in the IMO/ILO joint database on 13 December 2019 is summarized as follows:

*On 13 December 2019, there were 415 abandonment incidents listed in the database since it was established in 2004, concerning 5,297 seafarers. Of those incidents, 182 cases were resolved, 88 cases were disputed and 52 cases were inactive. There were still 82 unresolved cases. From 2011 to 2016, the number of cases*

<sup>590</sup> Information paper submitted by the Seafarers Group to the Third Meeting of the Special Tripartite Committee of the MLC, 2006 (Geneva 23-27 April 2018), p. 7, *supra* note 236.

<sup>591</sup> Report on the IMO/ILO joint database of abandonment of seafarers. Submitted by the ILO and IMO Secretariats: Provisions of financial security in case of abandonment of seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury to, or death of seafarers, in light of the progress of amendments to the ILO Maritime Labour Convention, 2006, LEG 107/4 13 December 2019. Agenda item 4 of the 107th session of IMO Legal Committee 16-20 March, 2020, paragraph 1.

<sup>592</sup> *Ibid.*

*per year ranged from 12 to 19. In 2017 and 2018, the cases reported increased drastically. In 2017, there were 55 cases reported, 14 of which were resolved that year and 8 were resolved in 2018. In 2018, the total number of reported cases was 44 and of these, 16 cases had so far been resolved. In 2019, the total number of reported cases was 40, and of these 6 cases had so far been resolved as of 13 December 2019. Of the cases reported in 2019, 4 involved flag States which had not ratified MLC, 2006, as follows: Comoros, Dominica, Syria and the United Arab Emirates. States which have not yet ratified MLC, 2006 are strongly encouraged to do so as soon as possible.<sup>593</sup>*

Following the entry into force on 18 January 2017 of the 2014 amendments to the MLC concerning financial security in cases of abandonment, as of 13 December 2019, there are the following statistics:

*137 abandonment cases have been reported to the joint IMO/ILO database. Within the period between 18 January 2017 and 13 December 2019, there were 10 reported cases of abandonment where the flag State was a party to MLC, 2006 but had not yet sent to the ILO their declaration of acceptance of the 2014 amendments (Belize, the Netherlands in respect of Curaçao<sup>2</sup> and Mongolia). Of these 10 cases, the majority (6) are still disputed or unresolved.<sup>594</sup>*

The ITF also submitted to the 107th session of the IMO Legal Committee 16-20 March, 2020 an *Analysis of incidents of abandonment for the period 1 January to 13 December 2019*<sup>595</sup> in the case of abandonment of seafarers and shipowners' responsibilities in respect of contractual claims for personal injury to or death of seafarers. According to this analysis the situation in respect of the reporting of incidents of abandonment for the period 1 January 2019 to 10 December 2019<sup>596</sup> is summarised as follows:

*3 During the period referred to, ITF reported the abandonment of 231 seafarers on 19 vessels. Of these cases, two are now considered resolved, five are disputed (the seafarers are no longer on board, but wage claims are ongoing), and 12 cases were ongoing at the time of writing this report. Of the unresolved cases, one is very close to resolution, and two are subject to legal action by the crew to recover wages.*

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<sup>593</sup> *Supra* note 591, paragraph 7.

<sup>594</sup> *Supra* note 591, paragraph 8.

<sup>595</sup> Analysis of incidents of abandonment for the period 1 January to 13 December 2019 Submitted by the International Transport Workers' Federation: Provisions of financial security in case of abandonment of seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury to, or death of seafarers, in light of the progress of amendments to the ILO Maritime Labour Convention, 2006, LEG 107/4/1 13 December 2019. Agenda item 4 of the 107th session of IMO Legal Committee 16-20 March, 2020.

<sup>596</sup> *Ibid.*

4 While this is a reduction in reporting, it should be noted that the number of cases reported by other organizations arose dramatically in 2019. Sixteen cases were reported by flag States, the International Chamber of Shipping and other parties, compared to two cases in 2018.<sup>597</sup>

ITF analysis in respect of the MLC discovered that:

10 Of the cases reported by ITF during the period, 13 (68%) involved vessels flying flags of States that have ratified MLC, 2006 and have accepted the entry into force of the 2014 amendments. Three were flying flags that have not ratified MLC, 2006; one had no flag; and three were flying a false flag.

11 Of the cases in which insurance was required, only eight had valid cover.

12 For cases not reported by ITF, 14 involved vessels flying flags of States that have ratified MLC, 2006 and have accepted the entry into force of the 2014 amendments, while two were flying flags that have not ratified MLC, 2006.<sup>598</sup>

In respect of cases with valid insurance, ITF analysis informs:

13 Of the cases in which valid insurance was in place, only one case resulted in the insurer paying the four months wages and repatriation as per the requirements of Standard A2.5.2 of MLC, 2006. Of the remaining seven cases with valid insurance, two resulted in the crew being fully paid by the owner; one resulted in the crew being partly paid by the owner; two resulted in the crew taking legal action to recover their wages (only one of these cases has concluded); one resulted in the crew being repatriated without wages; and one was reported recently and is well on the way to being resolved with the owner paying outstanding wages.

14 It is worth noting that all cases in which insurance was present led to some form of resolution. While it is disappointing that wages were not always recovered, situations in which the crew remained on board with little hope were largely avoided. No cases in which no insurance was present have been resolved in any positive manner.

15 ITF has anecdotal evidence that suggests a number of other cases in which valid insurance was present were also resolved without being reported to the database.

16 From the cases reported by ITF, it appears that insurers continue to see forcing the owner to pay as the preferable option when confronted with a claim under the MLC certificate. This often results in delays as owners' promises to pay are broken. Such delays mean that crew are more likely to be owed more than four months wages and are more likely to run out of supplies before the situation can be resolved.

... 18 In seven cases, the insurer was contacted but did not pay the four months wages or repatriation. There are varying degrees of involvement from insurers across these cases. One of the cases have been resolved, and the others are listed as disputed. In some of the cases, the shipowner has paid in response to pressure applied by the P & I club.<sup>599</sup>

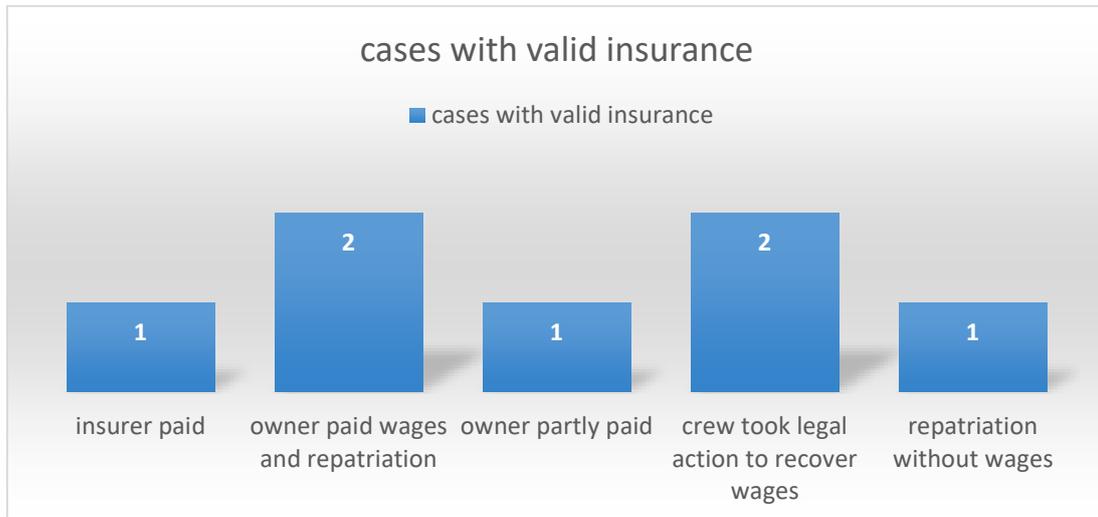
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<sup>597</sup> *Supra* note 595, paragraph 3 and 4.

<sup>598</sup> *Supra* note 595, paragraph 10-12.

<sup>599</sup> *Supra* note 595, paragraph 13, 14, 15, 16, 18.

**Graphic 3. Cases with valid insurance according to the ITF report submitted to the 107th session of the IMO legal Committee 16-20 March, 2020.<sup>600</sup>**



Taking into account the graphic above as well as other considerations in paragraphs 14-18 of the ITF analysis, it is obvious that the MLC amendments 2014 on requirements for financial security in cases of abandonment, in shipping practice, do not ensure protection for all seafarers. Seafarers can often be left unpaid or are not paid fully. And in some cases, seafarers still need to bring legal action against the shipowner for payments.

Of the eight cases in which insurance was required, in five cases there was no insurance or the insurance was recently cancelled.<sup>601</sup> Also the number of long running cases remains a problem.<sup>602</sup> It is difficult to give a definitive figure for the duration of abandonment cases. Seafarers do not always seek assistance immediately.<sup>603</sup>

Conclusions presented by ITF analysis are as in the following:

*24 This is the third year of the requirement and there continues to be problems in the practical implementation of Standard A2.5.2 of MLC, 2006. Vessels continue to operate without valid insurance in place. While the definition of abandonment, as set out in MLC, 2006, is quite clear, the circumstances surrounding abandonment and the relationships between flag States, shipowners, their insurers and other entities with a commercial interest in the vessel are extremely varied.*

<sup>600</sup> *Supra* note 595, paragraph 13.

<sup>601</sup> *Supra* note 595, paragraph 11.

<sup>602</sup> *Supra* note 595, paragraph 23.

<sup>603</sup> *Supra* note 595, paragraph 22.

... 26 ITF has identified three continuing problems:

.1 The failure of some shipowners to carry insurance and the failure of flag and coastal States to hold these owners responsible. The requirements of MLC, 2006 are clear, yet several vessels seem to be able to trade internationally despite non-compliance without encountering problems.

.2 The difficulties involved in solving long-running cases. More support is required from flags and port States to bring these cases to a close. Flag States in particular should consider what sanctions can be applied to owners who fail to resolve cases over a long period.

.3 Port States continue to refuse to allow the repatriation of abandoned seafarers when that would result in the vessel being unmanned due to safety concerns. Since last year's report, there have been no apparent steps by any State to allow for this problem. This problem is of particular concern as it increases the likelihood of seafarers being owed more than four months' wages, running out of fuel or food, and developing health problems. More steps need to be taken to allow for temporary breaches of safe manning requirements, something flag States appear willing to allow, in order to facilitate repatriation of abandoned seafarers.<sup>604</sup>

It should be noted that the IMO's Legal Committee in its 101st session approved *Guidelines for accepting insurance companies, financial security providers and the International Group of Protection and Indemnity Associations (P&I Clubs)*<sup>605</sup> for accepting Blue Cards or similar documentation from insurance companies to State's Parties to a number of IMO treaties. The guidelines relate to insurance certificates in relation to the CLC, BUNKER, 2007 Nairobi WRC, and the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended by the Protocol of 2010 to the Convention (the 2010 HNS Convention). The MLC is not listed between these conventions. The guidelines contain a list of criteria that may be used for accepting Blue Cards or similar documentation in order to check a company's financial standing. Taking into account the problems with mandatory insurance required by the MLC, it is worth to consider to amend the guidelines and insert reference to the MLC.

The difficulties in the implementation of Standard A2.5.2 of Regulation 2.5 of the MLC were presented to the 107th session of IMO Legal Committee 16-20 March, 2020 by India.<sup>606</sup> India, with 58 seafarers out of 231 (25 per cent), has the largest nationality group of abandoned

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<sup>604</sup> *Supra* note 595, paragraph 24 and 26.

<sup>605</sup> *Guidelines for accepting insurance companies, financial security providers and the International Group of Protection and Indemnity Associations (P & I Clubs)*, as approved by the Legal Committee at its 101st session (28 April to 1 May 2014), Circular Letter No.3464 of 2 July 2014. Available at: <https://britanniapandi.com/wp-content/uploads/2017/09/IMO-Circular-Letter-No.3464.pdf> Last visited in March 2020.

<sup>606</sup> Provisions of financial security in case of abandonment of seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury to, or death of seafarers, in light of the progress of amendments to the ILO Maritime Labour Convention, 2006, submitted by India, LEG 107/4/2 13 December 2019. Agenda item 4 of the 107th session of IMO Legal Committee 16-20 March, 2020.

seafarers according to the ITF *Analysis of incidents of abandonment for the period 1 January to 13 December 2019*.<sup>607</sup>

Problems faced by the Indian Administration are summarised as follows:

*6 However, it is the experience of the Indian Administration that in the unfortunate event of abandonment of ship by the shipowners, it is difficult to implement the aforesaid provisions of the Code of the MLC, 2006. The seafarers who have completed their contract and are willing to be repatriated, or even those who have been deemed abandoned as per the provisions of the MLC, 2006, cannot be repatriated due to non-availability of their replacement crew. The ships carrying certificates of the P & I clubs are also not in a position to repatriate the crew on board, as the responsibility for providing replacement crew is not with the P & I clubs. The same situation arises when a ship is under arrest and the financial security of the ship under the MLC, 2006 runs out during the period of arrest. The port authorities do not allow seafarers to leave the ship due to the safety concerns associated with the abandoned vessel.*<sup>608</sup>

As a solution to the problem, India proposed amendments to the MLC:

*.1 Amendment of Regulation 2.5 of MLC, 2006 to incorporate enabling provisions in Standard A2.5.2. Following Standard, A2.5.2 (9) (c), the following text may be added:*

*"(d) the cost of a replacement seafarer in the event the shipowner fails to provide replacement of the seafarer or seafarers who are deemed abandoned or already completed contract;*

*(e) the cost of a replacement seafarer shall cover travel by air by appropriate and expeditious means and shall include contractual obligation of shipowner for wages."*

*.2 Amendment of Appendix A5-I of the Regulation 5.1 of the MLC, 2006. Following the last item "Financial security relating to shipowners' liability", the following text may be added as a new item:*

*"Financial security for the cost of replacement seafarers against the seafarers entitled to repatriation and contractual obligation of the shipowner for wages sufficient to cover four months' wages of each such replacement."*<sup>609</sup>

The ICS also remains concerned about the current global abandonment situation and has several specific concerns related to cases listed on the database.<sup>610</sup> According to ICS, it is of

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<sup>607</sup> *Supra* note 595, paragraph 21; see also Information paper submitted by the Seafarers Group to the Third Meeting of the Special Tripartite Committee of the MLC, 2006 (Geneva 23-27 April 2018, p. 4, *supra* note 236:

*6. The largest nationality group of abandoned seafarers is Indian with 175 seafarers out of the 688 (25%), followed by Ukrainian with 138 (20%).*

<sup>608</sup> *Supra* note 606, paragraph 6.

<sup>609</sup> *Supra* note 606, paragraph 8.

<sup>610</sup> Provisions of financial security in case of abandonment of seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury to, or death of seafarers, in light of the progress of amendments to the ILO Maritime Labour Convention, 2006, Submitted by the International Chamber of Shipping (ICS), LEG 107/4/3, 10 January 2019. Agenda item 4 of the 107th session of IMO Legal Committee 16-20 March, 2020, paragraph 7.

importance to all stakeholders that an accurate list of cases is maintained.<sup>611</sup> It follows that some cases are not reported at an early stage and some are not reported at all.<sup>612</sup> Similarly, as India, the ICS expressed concern about seafarers not being repatriated because of the lack of replacement:

*ICS is very concerned about several instances this year of flag and port States reportedly not supporting the repatriation of abandoned seafarers due to safe manning requirements on board vessels. This has resulted in seafarers being kept on board unsafe and poorly equipped vessels for long periods in dangerous circumstances. In some cases, it has also resulted in demands for replacement seafarers to be sent to vessels known to have been abandoned and replacement seafarers being deployed to work on vessels without knowing that there are no funds available for payment of wages, the provision of food and other daily living requirements. While ICS understands the issues relating to safe manning, it would be useful if the Committee could look at ways to address this situation to the benefit of all affected.*<sup>613</sup>

Considering the above-mentioned, the conclusion is that the enforcement of the MLC amendments 2014 should be improved.

#### ***5.1.4. Questions still remain***

The entry into force of the MLC amendments 2014 has raised a number of complex and novel issues, and some related to the research question shall be addressed below.

#### ***Termination of financial security***

The MLC permits the termination of the financial security for abandonment and contractual claims before the end of validity with at least 30 days' notice by the insurer to the competent authority of the flag State.<sup>614</sup> The purpose of submitting the mentioned information to the flag State is that the flag State, who is aware of the termination of the previous financial security, can control

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<sup>611</sup> *Ibid*, paragraph 8.

<sup>612</sup> *Supra* note 610, paragraph 9 and 10.

<sup>613</sup> *Supra* note 610, paragraph 13.

<sup>614</sup> Standard A2.5.2, paragraph 11:

*The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.*

Standard A4.2.1, paragraph 12, MLC:

*12. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.*

whether a new financial security is arranged by the shipowner and, accordingly, if there will be a continuous insurance cover for the seafarers' claims. The MLC does not contain a requirement for the flag State to request the shipowner, whose financial security has terminated according to the mentioned insurer's notice, to replace the terminated financial security by another valid one; but this is actually what should be done. There is doubt if the shipowner, who already faces some financial problems, will voluntarily inform the flag State on termination of the financial security. The MLC does not require that seafarers are also informed about termination of the financial security for abandonment and issuance of a new one.

According to the MLC, seafarers have rights to receive a prior notification if the shipowner's financial security for contractual claims is to be cancelled or terminated<sup>615</sup>; but it is not specified by the Convention who is responsible for notification of the seafarers: the flag State, insurer or shipowner. As well, it is not required that, simultaneously with the notification about termination of this financial security, the seafarers have to be informed about a new financial security replacing the previous one. However, this could be argued that this is covered by the requirement to have a valid document on a financial security available on a board.

In respect of this, the Marshall Islands submitted consideration at the first meeting of the Special Tripartite Committee (Geneva, 7–11 April 2014) that the only means of notification to seafarers is via the shipowner; since, flag States have no authority to regulate financial security providers directly and that arranging for the seafarer to receive prior notification is difficult and immediate notification of non-renewal is problematic.<sup>616</sup> However, the flag States have the authority to require compliance with the MLC requirements from the shipowners.

The discussed public law requirements for termination of a financial security have direct effect on contractual aspects of insurance contract, a consensual contract entered into by equal parties. An insurance contract in respect of seafarers' claims can be terminated only if the MLC requirements about prior notification are taken into account. As follows from the information provided in the previous chapter, the situations when insurance cover is cancelled and a new insurance cover is not provided is present in cases of abandonment reported to the ITF. It leads to conclude that the MLC requirements on termination of insurance cover and notification to the flag

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<sup>615</sup> Standard A4.2.1, paragraph 9, MLC:

*National laws and regulations shall ensure that seafarers receive prior notification if a shipowner's financial security is to be cancelled or terminated.*

<sup>616</sup> Special Tripartite Committee (Geneva, 7–11 April 2014). Summary of observations and suggestions on the two sets of joint proposals for amendments to the Code of the Maritime Labour Convention, 2006. STCMLC/2014/1, paragraph 47, *supra* note 236.

State on this fact are not always observed in shipping practice – insurance providers do not inform flag States or flag States do not control this issue, or both.

### ***Direct action v. pay to be paid rule***

In marine insurance, the insurer is responsible for paying within the limits of the shipowner's liability which has been established by law. The marine insurance contract is a contract of indemnity, the aim of which is to financially compensate the insured, fully or partially, for the loss or damage suffered.<sup>617</sup> Under the *pay to be paid* rule, traditionally found in practically all of the clubs' Rules, P&I typically cover claims and expenses which their members have become liable to pay and, in fact, have paid.<sup>618</sup>

Since the MLC amendments 2014, this rule does not work in respect of insurance for seafarers' claims. As it was mentioned above, the financial security for seafarers' repatriation, death or long-term disability shall provide direct access to any seafarer in the case where he has rights to claim compensation from the shipowner. In marine liability insurance, the right of direct action is treated as an exception and is granted solely by statute or by an international convention for particular types of claims; provided there is a clear regime of liability, including limitation of liability, and, where compulsory, insurance with minimum requirements regarding the sum insured, deductibles and terms of coverage, is prescribed.<sup>619</sup> Accordingly, P&I should cover seafarers' claims, which shipowners in fact have not paid yet even after the insured's insolvency (which means the shipowner will not pay), directly to the seafarer after his request.

If the P&I is required to meet claims by seafarers, it will be entitled to seek reimbursement from the Member. A right of recourse of the insurer or provider of financial security against third parties is secured by Standard A2.5.2 of the MLC (added after the MLC amendments 2014).<sup>620</sup> However, if the shipowner is unable to pay, or insolvent, the loss will remain with the P&I.<sup>621</sup>

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<sup>617</sup> M. Pavliha, A.V. Padovan, *supra* note 549, p. 6001.

<sup>618</sup> M. Pavliha, A.V. Padovan, *supra* note 549, p. 591.

<sup>619</sup> M. Pavliha, A.V. Padovan, *supra* note 549, p. 594.

<sup>620</sup> Standard A2.5.2, MLC:

*12. If the provider of insurance or other financial security has made any payment to any seafarer in accordance with this Standard, such provider shall, up to the amount it has paid and in accordance with the applicable law, acquire by subrogation, assignment or otherwise, the rights which the seafarer would have enjoyed.*

*13. Nothing in this Standard shall prejudice any right of recourse of the insurer or provider of financial security against third parties.*

<sup>621</sup> Maritime Labour Convention 2006, as amended (MLC), Financial security requirements, IG FAQs for Members, Version 1 April 2019, FAQ 12. Available at:

To reiterate, in shipping practice, as can be seen from the information in the previous chapter on seafarers' abandonment cases, seafarers' rights to apply directly to the insurer do not work as good as they should. ITF Report 2018 states that in some cases the intervention of the insurer has resulted in the shipowner finding the resources to pay and repatriate seafarers; but, in other cases, insurers have appeared unaware of their responsibilities, in spite of having issued certificates referencing Regulation 2.5.2 of the MLC, and have either disputed the agreed definition of "abandonment" or deferred to the shipowner.<sup>622</sup> Also ITF Analysis 2019 revealed that, in some cases, insurers continue to find forcing the owner to pay as the preferable option when confronted with seafarers' claims, which often results in delays as owners' promises to pay are broken.<sup>623</sup> In some cases, the insurer was contacted but did not pay the full amount of wages or repatriation.<sup>624</sup>

### ***Insured person against liability in respect of MLC Standard A2.5.2 and Standard A4.2.1***

The terms and conditions of the contract of insurance in respect of the ship are evidenced by the Certificate of Entry – the document issued by the P&I Club after the entry of a ship has been accepted by the P&I Club.<sup>625</sup>

According to the Skuld P&I Rules 2019, entry of a vessel into the P&I Club may apply to the owner of a vessel.<sup>626</sup> Skuld P&I Rules 2019 define the owner as:

*Any owner, owner in partnership or owner holding separate shares in severalty, part owner, trustee or bareboat or demise charterer of any entered vessel, any manager or operator having control of the operation and employment of an entered vessel (being such control as is customarily exercised by a shipowner), and any other person in possession and control of any entered vessel.*<sup>627</sup>

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[https://www.skuld.com/contentassets/3fa08d98a34e41378297824a4d42cfa2/ig\\_mlc\\_faqs\\_external\\_20190401.pdf](https://www.skuld.com/contentassets/3fa08d98a34e41378297824a4d42cfa2/ig_mlc_faqs_external_20190401.pdf)  
Last visited in March 2020.

<sup>622</sup> *Supra* note 588, paragraph 18.

<sup>623</sup> *Supra* note 595, paragraph 16.

<sup>624</sup> *Supra* note 595, paragraph 18.

<sup>625</sup> Chapter 1 Rule 1; Chapter 5 Rule 1, GARD P&I Rules 2019. Available at: <http://www.gard.no/web/products/shipowners> Last visited in March 2020.

<sup>626</sup> See for example, Rule 1.1.1., SKULD 2019 P&I Rules. Available at: <https://www.skuld.com/products/Conditions/pi-rules/2019-pi-rules/> Last visited in March 2020.

<sup>627</sup> *Ibid*, Appendix 1 Definitions.

Skuld P&I Club may accept the entry of a vessel on behalf of more than one owner; and, as well, the club may agree to extend the insurance cover provided to the member to a co-assured named in the Certificate of Entry or to an affiliate who shall not be named in the Certificate of Entry.<sup>628</sup> Joint members and co-assureds named on any one Certificate of Entry shall be jointly and severally liable in respect of all premiums, calls and other sums due to the Association, in respect of the entered vessel.<sup>629</sup>

Under the Rules of another club, the Swedish P&I Club, the Member can be an owner, operator or bareboat charterer, whether an individual or a corporation, in favour of whom the Association has issued a policy of insurance under these Rules and any Joint Member mentioned therein.<sup>630</sup> Under Rule 30, the Swedish Club may allow the following persons to be additionally covered by the owners' insurance:

- 1) Joint members;<sup>631</sup>
- 2) Co-assureds;<sup>632</sup>

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<sup>628</sup> *Supra* note 626, Rule 1.2.2.

<sup>629</sup> *Supra* note 626, Rule 45.1.

<sup>630</sup> Rules for P&I Insurance 2020/2021, the Swedish Club, Rule 1. Available at: <https://www.swedishclub.com/films-and-publications/publications/rules-and-conditions/p-and-i-rules/> Last visited in March 2020.

<sup>631</sup> *Ibid*, Rule 30, *Joint members*:

***Joint Members***

*The Association may allow several Members to be covered jointly (Joint Members) by the same insurance on the following conditions unless otherwise agreed.*

*The Joint Members shall be jointly and severally liable for all sums due to the Association.*

*The Association may fully discharge its obligations with regard to payment under these Rules by payment to any one of the Joint Members.*

*Any communication by the Association to any one of the Joint Members or any other insured party shall be deemed to be communicated to all. Failure by any one of the Joint Members or any other insured party to disclose material information shall be deemed to be the failure of all.*

*Act or omission of any one of the Joint Members or any other insured party which causes the insurance to cease or which entitles the Association to terminate the insurance or to reject or reduce any compensation shall be deemed an act or omission of all.*

*The liability of the Association to the Joint Members shall not exceed the limitation under the fifth paragraph of Rule 2 had the registered Owner of the entered ship been the sole Member, except where the Joint member is*

*(a) any person interested in the operation, management or manning of the entered ship,*

*(b) the holding company or the beneficial owner of the Member or of any Joint Member falling within category (a) above and provided that the liability arises out of operations and/or activities customarily carried on by or at the risk and responsibility of shipowners and which is within the scope of the cover afforded by these Rules and any special terms set out in the Certificate of Entry.*

*Any liability of the parties insured to one other shall not be excluded nor discharged by reason of a common insurance. Any payment by the Association to one of the parties insured in respect of any liabilities, losses, costs and expenses shall operate only as satisfaction but not exclusion nor discharge of the liability of that party to any other party insured.*

<sup>632</sup> *Supra* note 630, Rule 30, *Co-assured*:

***Co-assureds***

*The Association may allow other parties to become co-assureds under a Member's insurance on the following conditions unless otherwise agreed.*

- 3) Affiliated charterers;<sup>633</sup>
- 4) Contractors.<sup>634</sup>

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*The liability of the association to co-assureds shall be limited to liabilities, costs or expenses which the co-assured is found liable to pay for loss or damage which is properly the responsibility of the Member and which the Member would have incurred if the claim had been pursued against him and which would have been reimbursed by the Association under these Rules.*

*The Association may fully discharge its obligations with regard to payment under these Rules by payment to any one of the co-assureds or to any other insured party in respect of that loss or damage.*

*Any communication by the Association to any one of the co-assureds or any other insured party shall be deemed to be communicated to all. Failure by any one of the co-assureds or any other insured party to disclose material information shall be deemed to be the failure of all.*

*Act or omission of any one of the co-assureds or any other insured party which causes the insurance to cease or which entitles the Association to terminate the insurance or to reject or reduce any compensation shall be deemed an act or omission of all.*

*The liability of the Association to the co-assureds shall not exceed the limitation under the fifth paragraph of Rule 2 had the claim been pursued against the registered Owner of the entered ship.*

*Any liability of the parties insured to one other shall not be excluded nor discharged by reason of a common insurance. Any payment by the Association to one of the parties insured in respect of any liabilities, costs and expenses shall operate only as satisfaction but not exclusion nor discharge of the liability of that party to any other party insured.*

<sup>633</sup> *Supra* note 630, Rule 30, *Affiliated Charterers:*

***Affiliated charterers***

*The Association may allow affiliated charterers of the entered ship to be covered by the Member's insurance provided that the liability arises out of operations and/or activities customarily carried on by or at the risk and responsibility of shipowners and which is within the scope of the cover afforded by these Rules and any special terms set out in the Certificate of Entry.*

*Any communication by the Association to any one of the affiliated charterers or any other insured party shall be deemed to be communicated to all. Failure by any one of the affiliated charterers or any other insured party to disclose material information shall be deemed to be the failure of all.*

*Act or omission of any one of the affiliated charterers or any other insured party which causes the insurance to cease or which entitles the Association to terminate the insurance or to reject or reduce any compensation shall be deemed an act or omission of all.*

*The liability of the Association to affiliated charterers is limited to USD 350 Million for any one event.*

*Any liability of the parties insured to one other shall not be excluded nor discharged by reason of a common insurance. Any payment by the Association to one of the parties insured in respect of any liabilities, costs and expenses shall operate only as satisfaction but not exclusion nor discharge of the liability of that party to any other party insured.*

<sup>634</sup> *Supra* note 630, *Contractors:*

***Contractors***

*The Association may allow any party who has entered into a contract with a Member for the provision of services to or by the entered ship (contractor), and any subcontractor of the contractor, to be covered by the Member's insurance provided that the contract includes a knock for knock agreement and has been approved by the Association.*

*The liability of the Association to contractors is limited to liabilities, costs and expenses which are borne by the Member under the terms of the contract and would, if borne by the Member, have been recoverable by the Member from the Association.*

*Any communication by the Association to any one of the contractors or any other insured party shall be deemed to be communicated to all. Failure by any one of the contractors or any other insured party to disclose material information shall be deemed to be the failure of all.*

*Act or omission of any one of the contractors or any other insured party which causes the insurance to cease or which entitles the Association to terminate the insurance or to reject or reduce any compensation shall be deemed an act or omission of all.*

*The liability of the Association to contractors shall not exceed the limitation under the fifth paragraph of Rule 2 had the registered Owner of the entered ship been the sole Member.*

*Any liability of the parties insured to one other shall not be excluded nor discharged by reason of a common insurance. Any payment by the Association to one of the parties insured in respect of any liabilities, costs and expenses shall operate only as satisfaction but not exclusion nor discharge of the liability of that party to any other party insured.*

Under Rule 32 of the Swedish Club, the Club may agree to extend the cover afforded by the Association to affiliated companies of the Member which are not named in the Certificate of Entry on such terms as may be agreed.

In yet another club, under the Rules for Mutual P&I cover by the West of England Ship Owners Mutual Insurance Association (Luxembourg), the Member is usually the registered owner of the vessel but, recognising that typical corporate structures may include other entities such as operators and managers who have an interest in the operation of the ship and could be exposed to potential liabilities, cover is also available to these parties on either a Joint Member or Co-Assured basis. Charterers (other than bareboat) can only be covered on a Mutual P&I policy if they are affiliated to or associated with the Member, otherwise the Club's Charterers Cover product is available to meet their specific needs.<sup>635</sup>

According to the International Group of P&I Clubs (IG), some of the risk under the MLC Certificate falls outside the scope of standard P&I cover.<sup>636</sup> Therefore, to cover the owner's risk in respect of the MLC responsibilities, under the Rules of some Clubs, it is required to include in the insurance policy the Maritime Labour Convention extension Clause 2019,<sup>637</sup> which states that:

*Subject only to the other provisions of this extension, the club shall discharge and pay on the member's behalf under the 2006 Maritime Labour Convention, as amended (MLC 2006) or domestic legislation by a state party implementing MLC 2006:*

- (a) liabilities in respect of outstanding wages and repatriation of a seafarer together with costs and expenses incidental thereto in accordance with Regulation 2.5, Standard A2.5.2 and Guideline B2.5; and*
- (b) liabilities in respect of compensating a seafarer for death or long-term disability in accordance with Regulation 4.2, Standard A4.2.1 and Guideline B4.2.*

Paragraph 2 of the MLC Extension Clause imposes an obligation on the Member to reimburse its Club if a claim which the Club has paid out to a seafarer falls outside the scope of cover.<sup>638</sup>

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<sup>635</sup> Mutual P&I cover of the West of England Ship Owners Mutual Insurance Association (Luxembourg). Available at: <https://www.westpandi.com/products/standard-covers/mutual/> Last visited in March 2020.

<sup>636</sup> IG MLC FAQs, paragraph 19, *supra* note 621.

<sup>637</sup> IG MLC FAQs, *supra* note 621, FAQ 12; See for example P&I and Defence Rules and Correspondents 2019/20 of The Standard Club Ltd, p. 99. Available at <https://www.standard-club.com/risk-management/knowledge-centre/publications/club-rules.aspx> Last visited in March 2020.

<sup>638</sup> See for example P&I and Defence Rules and Correspondents 2019/20 of The Standard Club Ltd, *supra* note 637, p. 99.

Often shipowners outsource crew management to a crew manager<sup>639</sup> and under the ship management contract the responsibility of taking out insurance cover for the ship can be passed on to the ship manager.

According to the IG P&I, it is normal practice for some shipowners to exclude crew risks and to outsource crew management to a third party who arranges separate P&I insurance for crew risks.<sup>640</sup> The reason for this split in insurance is either for administrative reasons (i.e. the manager can deal with the crew claims directly) or tax considerations as a shipowner may not wish to be seen as the employer of the crew. Ironically, the premium saved by excluding crew P&I risks from the owner's P&I policy is minimal; but, without careful thought the uninsured risk can be substantial.<sup>641</sup> In such cases, the following considerations should be considered:

- 1) to make clear in a ship management contract what type of crew insurance will be purchased;
- 2) insurance just for their contractual liability under local crew considerations or also for claims by crew in tort, the limit of liability to be purchased etc. If the manager is only placing crew P&I insurance to cover contractual liabilities under local crew conditions, the owner will need to take out cover for claims by the crew in tort. Even where the ship owner and the ship manager have properly insured for their respective risks there is a potential for a dispute between the crew P&I insurer and the ship owner's P&I insurer as to whether the claim should fall under the tortious or contractual cover.
- 3) another option is to name each company as a joint assured or co-assured on each other's P&I insurances (for both the ship owner and the crew), but this may not always be practical or tax efficient.<sup>642</sup>

According to the examples of national maritime labour law, the shipowner in respect of the MLC responsibilities can be the owner of the ship, bareboat charterer, ship manager or other third party. Meanwhile, according to the above-mentioned, the Certificate of Entry can be issued to the

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<sup>639</sup> *Supra* note 621, FAQ 12.

<sup>640</sup> *Supra* note 621:

**18. Can Certificates be provided when the P&I policy excludes crew risks?**

*Yes. Some shipowners elect to exclude crew risks and have outsourced crew management to a third party who arranges separate P&I insurance for crew risks. If the other insurers are unwilling or unable to provide MLC Certificates, Members may approach their Club to provide them. In assessing such request, the Club will need to take account of the fact that if it issues certificates it is accepting responsibility for liabilities which are covered by another insurer. This is a matter for the Club's discretion. If it agrees to such a request, it will require an indemnity from the other insurer for liabilities covered under the other insurance. If the other insurer is an IG Club, or a wholly owned subsidiary of an IG Club, this indemnity will be provided automatically under an underlying agreement between the Clubs. If the other insurer is not an IG Club, a separate indemnity will be required. The other insurer, whether an IG Club or not, shall on request provide details of the insurance cover.*

<sup>641</sup> See information available at: <https://www.westpandi.com/search/?query=mlc> Last visited in March 2020.

<sup>642</sup> See information available at: <https://www.itic-insure.com/resources/publications/intermediary/article/the-dangers-of-placing-separate-p-i-insurance-for-crew-2923/> Last visited in March 2020.

owner, bareboat charterer or operator (ISM Company). What options exist for other persons? Other persons can be listed in the Certificate of Entry and receive insurance cover by the Club as the co-assureds, Affiliated Members or contractors under specific conditions. Some insurance providers have special offers for crew management companies. For example, Gard P&I offers special crew cover for crew management companies; this cover was developed for situations where crew managers are not permitted to be co-insured under the owners' P&I insurance and, therefore, need to take out separate crew insurance.<sup>643</sup> Also, the United Kingdom Mutual Steamship Assurance Association (Bermuda), Ltd. offers separate crew management insurance which covers shipowners' legal liabilities to crew members under their crew employment contracts or agreements, subject to those contracts or agreements being approved by the Club.<sup>644</sup>

The West of England offers an additional insurance product to third parties – *Third Party Shipmanagers MLC Cover*. The Club cover does not extend to crew wages or repatriation caused by abandonment; but, the Club agreed to issue the necessary certification and to indemnify seafarers directly, if required; though, this is on the basis that the Club has the right of indemnity to recover those liabilities which fall outside of cover from the Member. Independent, third party ship managers are often named on the vessel's P&I policy as a Joint Member in order to obtain the benefit of the cover because of their involvement in the running of the vessel. Cover is available up to US\$ 5 million for any one accident; occurrence; or series of accidents or occurrences arising out of one event. The ship manager must be an independent third party and not part of the shipowner's or beneficial owner's organization.<sup>645</sup>

Consequently, there are products in the insurance market intended to cover the liability of third parties, not being traditional P&I Club members, in respect of the MLC. Detailed analysis would be necessary to discover if these products fully covered MLC liabilities.

Taking into account the above-mentioned, it is possible that the document holder named on the MLC Certificate and in the DMLC – Part II (Annex B) will differ from the registered owner

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<sup>643</sup> GARD crew cover:

*The crew cover responds to a crew management company's legal or contractual liability for crew members under contract and arising out of operations customarily carried out at the risk and responsibility of a shipowner. Crew managers, acting as principals, prefer to take out separate crew risk insurance in order to handle claims directly with their insurer. In addition, crew managers are occasionally not permitted to be co-insured under the owners' P&I insurance, and therefore need to take out separate crew insurance. Gard's crew cover is developed for these situations, and responds to the traditional crew liabilities.*

More information is available at: <http://www.gard.no/web/products/shipowners> Last visited in March 2020.

<sup>644</sup> Information available at: <https://www.ukpandi.com/knowledge-publications/article/crew-management-143384/> Last visited in March 2020.

<sup>645</sup> See information available at: [https://www.westpandi.com/getattachment/57c9efb0-d204-4023-a219-570443bb044d/third\\_party\\_shipmanagers\\_mlc\\_cover.pdf](https://www.westpandi.com/getattachment/57c9efb0-d204-4023-a219-570443bb044d/third_party_shipmanagers_mlc_cover.pdf) Last visited in March 2020.

named on the financial security Certificates issued by the P&I Club. As pointed out by the NMA in 2017, it created the situations where vessels are being detained in PSC due to misunderstandings with respect to the entity named on the certificates of financial security.<sup>646</sup>

Although a crew management company or other third parties acting as the shipowner for the purposes of the MLC can also obtain financial security in respect of seafarers' claims, it should not preclude responsibility of the shipowner. As it was pointed out by McConnell, if a crew manager becomes insolvent and does not pay seafarers' wages, the shipowner should remain responsible for paying the crew.<sup>647</sup> Therefore, irrespective of the existence of any outside or third party employer for the seafarer concerned, the flag State must require that the ship or shipowner provide financial security to ensure seafarers are repatriated and for the shipowner's liability for compensation for death or long term-disability of a seafarer due to an occupational injury or illness or hazard.<sup>648</sup>

Taking into account the above-mentioned from a seafarer's perspective, a most convenient would be to establish an Employers' Liability Register available through the official webpage of the flag State, similar to that required under UK law and generally known as Employers' Liability Insurance.<sup>649</sup> Under this UK requirement, every insurance provider is required to produce an employers' liability register and, in respect of seafarers' claims, every P&I Club should provide in its homepage a searchable and updated list of ships. Using such webpages, the seafarers who were abandoned or have suffered injury or illness in the workplace can easily identify their employer's liability insurer. Also, P&I policies of P&I Clubs outside the UK can include this element.<sup>650</sup>

## 5.2. Flag State responsibility

Traditionally, jurisdiction over a ship has been connected with its nationality. The nationality of a ship is that of the State in whose register of ships the ship is entered.<sup>651</sup> By placing

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<sup>646</sup> See NMA information available at: <https://www.sdir.no/en/shipping/legislation/directives/entities-stated-on-financial-security-certificates-cf.-maritime-labour-convention-2006/> Last visited in March 2020.

<sup>647</sup> M. L. McConnell, *supra* note 306, p. 124.p.

<sup>648</sup> *Ibid.*

<sup>649</sup> *Supra* note 450.

<sup>650</sup> For example, see information of the Swedish Club, available at: <https://www.swedishclub.com/insurance/p-and-i/employers-liability-register-elt/> Last visited in March 2020.

<sup>651</sup> Fr. Berlingieri, *Berlingieri on arrest of ships. Commentary on the 1952 Arrest Convention*, London, LLP Limited, 1996, p. 12.

a ship on its register a State assumes the authority to exercise over the ship and undertakes the national and international responsibilities of a flag State in relation to that ship.<sup>652</sup> The ascription of nationality to ships is one of the most important means by which public order is maintained at sea.<sup>653</sup>

As mentioned in Chapter 2.1. of the thesis, the duty of the flag State to exercise effective jurisdiction and control over ships flying its flag is established by UNCLOS. UNCLOS defines the general principles of flag State responsibility in respect of seafarers' social rights and labour rights. Every State shall take such measures for ships flying its flag as are necessary to ensure safety at sea with regard to social matters and labour conditions, taking into account applicable international instruments.<sup>654</sup> Under Article 95 of UNCLOS, every State shall effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag. In particular, every State shall assume jurisdiction under its internal law over each ship flying its flag and its master, officers and crew in respect of administrative, technical and social matters concerning the ship.<sup>655</sup>

The registration of ships in the register of one or another state is linked to economic factors, as described in the Introduction of the thesis. But every flag State has to find a balance between flag State responsibility to ensure the highest safety standards of its fleet and be attractive flag State for shipowners in terms of costs and offered services.

Most of the obligations under the MLC are directed to the flag States. As in respect of any international treaty, in respect of the MLC the flag State's responsibility is the adoption of national laws to fulfil its commitments under the Convention with respect to ships and seafarers under its jurisdiction; and the State's responsibility for the effective implementation and enforcement of laws or regulations or other measures that it has adopted, as required by Article 91, paragraph 1 of UNCLOS as well as Article V, paragraph 1 of the MLC. The national legislators have an important role in the designing of appropriate legal regulation which ensures, as much as possible, that the seafarer has information on the actual shipowner and minimizes possibilities to contract out the shipowner's liability by delegating its duties to other organizations. The role of national legal regulation in the implementation of the MLC Standards is discussed in Chapter 3 of the thesis.

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<sup>652</sup> Z. O. Ozcayir, *supra* note 33, p. 7.

<sup>653</sup> R. R. Churchill, A. V. Lowe, *supra* note 112, p. 257.

<sup>654</sup> Article 94, paragraph 1, 2 and 3, UNCLOS.

<sup>655</sup> UNCLOS, Article 95 (2) (b).

This Sub-chapter is devoted to the flag State's obligations in respect of the effective enforcement of the MLC Standards as well as the national laws and regulations implementing these standards. In order to ensure the effective implementation of the MLC, every flag State shall establish an effective inspection and certification system, which also includes such elements as: authorisation of competent RO's to carry out inspections or to issue certificates or to do both on behalf of the flag State, effective dealing with seafarers' claims and repatriation of seafarers in the case of abandonment. The relevant flag State obligations in respect of seafarers employed on board its ships are contained in *Regulation 5.1. – Flag State responsibilities* under Title 5: *Compliance and enforcement* of the MLC Code. The flag State's responsibilities in respect of seafarers' repatriation is contained in *Regulation 2.5 – Repatriation* of the MLC Code.

### ***5.2.1. Inspections and certification***

Under paragraph 2 of Regulation 5.1.1 of the MLC, an effective system ensuring that the working and living conditions for seafarers on ships that fly a flag State's flag are met is based on inspection and certification of maritime labour conditions and each Member shall establish such system.

The fact that the ship has been duly inspected by the Member whose flag it flies and that the requirements of the MLC relating to working and living conditions of the seafarers have been met to the extent so certified is evidenced by the MLC Certificate, complemented by the DMLC (Annex B). The afore-mentioned documents constitute *prima facie* evidence that the ship has been duly inspected by the Member whose flag it flies and meets requirements of the MLC.<sup>656</sup> These two documents provide evidence of the compliance with the MLC. The DMLC sets out the national provisions implementing the MLC in respect of seafarers' working and living conditions and describes the measures taken by the shipowner to ensure compliance with those provisions on board the ship or ships concerned. The DMLC indicates the name of the shipowner and the address of the company. The MLC Certificate certifies that the working and living conditions of seafarers on board the ship, including measures to ensure ongoing compliance with the provisions adopted, have been inspected and meet the requirements of national laws and regulations or other provisions relating to the implementation of the MLC. The Certificate shall be issued by the competent authority of the Member State or by an organization duly authorised by the Member State after inspection. Its period of validity shall not exceed five years and its validity shall be conditional

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<sup>656</sup> Regulation 5.1.1, paragraph 4, MLC.

upon the completion of an intermediate inspection to ensure continued compliance with the national provisions implementing the MLC. This document sets out the vessel's information and also the name and address of the shipowner.

Regulation 5.1.3. – *Maritime labour certificate and declaration or maritime labour compliance* and Regulation 5.1.4 – *Inspection and enforcement* of the MLC contains provisions on inspection and certification. Each MLC ship shall carry on board the MLC Certificate, complemented by the DMLC (Annex B), issued after inspection by the flag State<sup>657</sup> as Regulation 5.1.3., paragraph 3 and 4 of the MLC provides:

*3. Each Member shall require ships that fly its flag to carry and maintain a maritime labour certificate certifying that the working and living conditions of seafarers on the ship, including measures for ongoing compliance to be included in the declaration of maritime labour compliance referred to in paragraph 4 of this Regulation, have been inspected and meet the requirements of national laws or regulations or other measures implementing this Convention.*

*4. Each Member shall require ships that fly its flag to carry and maintain a declaration of maritime labour compliance stating the national requirements implementing this Convention for the working and living conditions for seafarers and setting out the measures adopted by the shipowner to ensure compliance with the requirements on the ship or ships concerned.*

The model of the MLC Certificate and the DMLC is prescribed by Appendix A5-II of the MLC. For the purpose of this research, it should be mentioned that the name and address of the shipowner is the information that shall be inserted into the certificate. The term “shipowner” is explained by the reference to the term “shipowner” as it is defined in Article II (1) (j) of the MLC. The DMLC has two parts: Part I is drawn up and signed by the competent authority; and Part II is drawn up and signed by the shipowner, as named in the MLC Certificate to which the DMLC is attached, and certified by the competent authority.<sup>658</sup> The DMLC – Part I should contain a reference to the specific national requirements in respect of the SEA, health and safety, accident prevention, payment of wages, financial security for repatriation and financial security relating to shipowner’s liability, etc.<sup>659</sup> Under Standard A5.1.4 –*Inspection and enforcement*, paragraph 1 of the MLC:

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<sup>657</sup> Regulation 5.1.3, paragraph 3 and Appendix A5-I, MLC.

<sup>658</sup> Regulation 5.1.3, paragraph 10; Appendix A5-II, MLC.

<sup>659</sup> Appendix A5-II, MLC.

*1. Each Member shall maintain a system of inspection of the conditions for seafarers on ships that fly its flag which shall include verification that the measures relating to working and living conditions as set out in the declaration of maritime labour compliance, where applicable, are being followed, and that the requirements of this Convention are met.*

A valid MLC certificate shall be available on board<sup>660</sup> and a copy of the MLC certificate and DMLC shall be posted in a conspicuous place on board to be available to all seafarers.<sup>661</sup>

Validity of the MLC Certificate is subject to the inspection carried out by the competent authority, usually national maritime administrations, of the flag State or by other organizations recognised to be competent and independent.<sup>662</sup> Standard A5.1.3 of the MLC contains detailed provisions on issuance of the MLC Certificate as well as on withdrawal of it. The list of matters stated in Appendix A5-I of the MLC must be inspected and found to meet national laws implementing the MLC before the MLC Certificate is issued to a ship registered in the State's register. One of these matters is the SEA.<sup>663</sup> By the MLC amendments 2014 financial security for repatriation and financial security relating to the shipowner's liability were added to this list.

Additionally, for EU Member States Directive 2013/54/EU requires to ensure that effective and appropriate enforcement and monitoring mechanisms, such as inspections according to the MLC; authorisation of public institutions or other organizations, if necessary; complaint handling procedures, etc. are established.<sup>664</sup>

### **5.2.2. Handling of complaints**

Special attention is paid by the MLC to the flag State responsibility in respect of inspection of complaints. On every ship it is required to have on-board procedures for the fair, effective and expeditious handling of seafarer complaints alleging breaches of the requirements of the MLC.<sup>665</sup> Complaints need to be resolved at the lowest level possible. However, in all cases, seafarers shall have the right to complain directly to the master and, where they consider it necessary, as well as

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<sup>660</sup> Standard A5.1.1, paragraph 2, MLC.

<sup>661</sup> Regulation 5.1.3, paragraph 12, MLC.

<sup>662</sup> Regulation 5.1.2, paragraph 1; Standard A5.1.3 paragraph 2, MLC.

<sup>663</sup> Standard A5.1.3, paragraph 1, MLC.

<sup>664</sup> See Article 3, 4, 5, *supra* note 275.

<sup>665</sup> Regulation 5.1.5 – On-board complaint procedures, paragraph 1, MLC.

to appropriate external authorities.<sup>666</sup> All seafarers shall be provided with a copy of the on-board complaint procedures applicable on the ship, which shall include contact information for the competent authorities and persons who can provide seafarers with impartial advice on their complaint and otherwise assist them.

The adequate machinery and procedures for inspecting seafarers' claims should exist not only concerning the breach of seafarers' rights on the ship but also in respect of complaints concerning the activities of SRPS.<sup>667</sup>

According to Standard A5.1.4, paragraph 5 of the MLC, a complaint may be the basis for inspection of the ship by the flag State:

*5. If a Member receives a complaint which it does not consider manifestly unfounded or obtains evidence that a ship that flies its flag does not conform to the requirements of this Convention or that there are serious deficiencies in the implementation of the measures set out in the declaration of maritime labour compliance, the Member shall take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found.*

In order to avoid possible negative consequences for the claimant, the MLC under Standard A5.1.4, paragraph 10 requires to ensure confidentiality in respect of the claimant – the seafarer:

*10. Inspectors shall treat as confidential the source of any grievance or complaint alleging a danger or deficiency in relation to seafarers' working and living conditions or a violation of laws and regulations and give no intimation to the shipowner, the shipowner's representative or the operator of the ship that an inspection was made as a consequence of such a grievance or complaint.*

In practice, it is very difficult to keep a claimant's person fully confidential. Especially when the claim is an individual one – in circumstances related to the specific individual. Often there are cases when the claimant soon is dismissed from work. Any kind of victimisation of a seafarer for filing a complaint shall be prohibited and penalised by the Member State.<sup>668</sup> The term “victimisation” covers any adverse action taken by any person with respect to a seafarer for lodging a complaint which is not manifestly vexatious or maliciously made.<sup>669</sup> It is very difficult to prove that the reason for dismissal was a claim and no other reasons officially provided by the shipowner.

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<sup>666</sup> Standard A5.1.5 – On-board complaint procedures, paragraph 1, MLC.

<sup>667</sup> Standard A1.4 – Recruitment and placement, paragraph 7, MLC.

<sup>668</sup> Regulation 5.1.5 – On-board complaint procedures, paragraph 2, MLC.

<sup>669</sup> Standard A5.1.5 – On-board complaint procedures, paragraph 2, MLC.

Moreover, to prove victimisation, it is more than likely a litigation process needs to be started, in which the outcome is unpredictable, as in the case mentioned below.

The case *Wilson v The Secretary of State for Transport* before the UK Administrative Court was not successful for one seafarer.<sup>670</sup> The proceedings arose out of an employment dispute between Mr. Wilson and his former employer, Princess Cruise Lines, Limited (PCL), a company registered in Bermuda and part of the group responsible for P&O Cruises. Mr. Wilson believed that PCL had terminated his employment in response to, or retaliation for, a complaint he had made about its conduct towards him and more generally. He asked the Maritime and Coastguard Agency (MCA) to investigate his grievance, with a view to enforcing compliance by PCL with its duties under the MLC.

The relevant UK regulation is contained in Regulation 13(5) of S.I. 2013/1785:

*(1) The shipowner and the master of a ship to which this regulation applies must ensure that there is available to a seafarer on that ship a procedure to lodge a complaint alleging a breach of the requirements of the Maritime Labour Convention and for that complaint to be resolved fairly, effectively and expeditiously."*

*(...) (4) A seafarer may lodge with the MCA a complaint alleging a breach of the requirements of the Maritime Labour Convention, and the MCA must treat the source of any such complaint as confidential.*

*(5) The shipowner and the master of a ship must ensure that a seafarer is not subjected to any detriment on the grounds that the seafarer has lodged a complaint, whether through an on-board procedure or to the MCA, alleging a breach of the requirements of the Maritime Labour Convention.*

The decision of the MCA was that Wilson's employment was terminated for a reason other than the fact that he made a complaint against the company. Mr. Wilson submitted a claim to the Court claiming that the MCA has persistently failed to investigate his complaint fairly and without bias. Mr Wilson's first submission on 30 December 2014 was refused. Mr Wilson renewed his application and on 25 March 2015 permission for an oral hearing was granted. The MCA agreed to carry out a fresh review of Mr Wilson's complaint. The MCA considered that its report gave Mr. Wilson everything that he could reasonably want from this litigation and invited him to discontinue the proceedings. However, Mr. Wilson did not consider that the report amounted to satisfactory redress and proceedings were continued. Not going into detail of the Court's reasoning, the conclusion of the Court was:

*73. For the reasons set out above, this claim must fail. Mr Wilson's fundamental complaint, namely that PCL was in breach of regulation 13(5) of the Certification Regulations, was rightly rejected by the MCA and in*

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<sup>670</sup> *Wilson v The Secretary of State for Transport* (Rev 1) [2015] EWHC 2330 (Admin) (31 July 2015). Available at: <http://www.bailii.org/ew/cases/EWHC/Admin/2015/2330.html> Last visited in March 2020.

*those circumstances the entirety of his case in these proceedings is academic. Regardless of that point, the decision of 1 October 2014, though ineptly expressed, was a fair and unbiased decision, which, when read fairly and reasonably, stated clearly intelligible conclusions and enabled the reasons for those conclusions to be sufficiently understood. Even if it were possible to raise objections to the state of the MCA's decision-making as at 1 October 2014, any such objections would have been addressed by the subsequent decisions of the ICA on 12 November 2014 and Ms Carlton on 29 May 2015.*

Directive 2013/54/EU<sup>671</sup> also addresses monitoring of compliance and handling of seafarers' complaints. Article 5 of Directive 2013/54/EU contains the provisions in respect of complaints handling, reflecting the MLC provisions – Standard A5.1.4, paragraphs 5 and 10 and Regulation 5.1.5., paragraph 1.

### **5.2.3. Authorization of RO's**

Since most national maritime administrations do not have the capacity to solely ensure enforcement of all international standards on their ships, authorization of other organizations to conduct surveys of ships in respect of compliance with international requirements on behalf of flag States is usual practice.

According to the MLC, a flag State may also authorise other organizations to carry out inspections or to issue MLC Certificates or to do both, in all cases remaining fully responsible for inspection and certification.<sup>672</sup> Traditionally, classification societies are those other organizations who provide statutory services and assistance to flag States as regards the surveys and certification of their ships. Principles of authorization of RO's relating to the inspection of maritime labour standards are contained in the *Regulation 5.1.2 – Authorization of recognized organizations* of the MLC.

Paragraph 1 of Standard A5.1.2 – *Authorization of recognized organizations* of the MLC prescribes requirements the organization has to meet regarding competency and independence to be recognised by the competent authority as a RO:

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<sup>671</sup> *Supra* note 275.

<sup>672</sup> Regulation 5.1.1, paragraph 3, MLC:

*In establishing an effective system for the inspection and certification of maritime labour conditions, a Member may, where appropriate, authorize public institutions or other organizations (including those of another Member, if the latter agrees) which it recognizes as competent and independent to carry out inspections or to issue certificates or to do both. In all cases, the Member shall remain fully responsible for the inspection and certification of the working and living conditions of the seafarers concerned on ships that fly its flag.*

- (a) *has the necessary expertise in the relevant aspects of this Convention and an appropriate knowledge of ship operations, including the minimum requirements for seafarers to work on a ship, conditions of employment, accommodation, recreational facilities, food and catering, accident prevention, health protection, medical care, welfare and social security protection;*
- (b) *has the ability to maintain and update the expertise of its personnel;*
- (c) *has the necessary knowledge of the requirements of this Convention as well as of applicable national laws and regulations and relevant international instruments; and*
- (d) *is of the appropriate size, structure, experience and capability commensurate with the type and degree of authorization.*

Accordingly, the organization seeking recognition should demonstrate the technical, administrative and managerial competence and capacity to ensure the provision of timely service of satisfactory quality.<sup>673</sup> In practice, it will usually be a member of the International Association of Classification Societies (IACS).<sup>674</sup>

Paragraph 3 of the Guideline B5.1.2 – *Authorization of recognized organizations* of the MLC requires a written agreement between the competent authority and organization. Any authorisations granted with respect to inspections shall, as a minimum, empower the RO to require the rectification of deficiencies that it identifies in seafarers’ working and living conditions and to carry out inspections in this regard at the request of a port State.<sup>675</sup> Additionally, the RO may also be authorized to issue certificates on behalf of the flag State.<sup>676</sup> Under paragraph 6 of Guideline B5.1.2 of the MLC, in establishing the oversight procedures for organizations, Members should take into account the *Guidelines for the Authorization of Organizations Acting on Behalf of the Administration*, adopted in the IMO.

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<sup>673</sup> Guideline B5.1.2 – Authorization of recognized organizations, paragraph 1, MLC.

Paragraph 2 of the Guideline B5.1.2 – Authorization of recognized organizations, MLC:

*2. In evaluating the capability of an organization, the competent authority should determine whether the organization:*

- (a) has adequate technical, managerial and support staff;*
- (b) has sufficient qualified professional staff to provide the required service, representing an adequate geographical coverage;*
- (c) has proven ability to provide a timely service of satisfactory quality; and*
- (d) is independent and accountable in its operations.*

<sup>674</sup> <http://www.iacs.org.uk/> Last visited in March 2020.

<sup>675</sup> Standard A5.1.2 – Authorization of recognized organizations, paragraph 2, MLC.

<sup>676</sup> Regulation 5.1.1, paragraph 3, MLC:

*In establishing an effective system for the inspection and certification of maritime labour conditions, a Member may, where appropriate, authorize public institutions or other organizations (including those of another Member, if the latter agrees) which it recognizes as competent and independent to carry out inspections or to issue certificates or to do both. In all cases, the Member shall remain fully responsible for the inspection and certification of the working and living conditions of the seafarers concerned on ships that fly its flag.*

The relevant IMO regulation is contained in several IMO Resolutions. Elements to be included in the written agreement between the flag State and authorised organization agreement are contained in Appendix 2 of IMO Resolution A.739(18) *Guidelines for the Authorization of Organizations Acting on Behalf of the Administration*.<sup>677</sup> Regulation 1 of Chapter XI of SOLAS makes this Resolution mandatory. Detailed specifications in respect of the competence of RO's are given in IMO Resolution A.789(19) *Specifications on the survey and certification functions of recognized organizations acting on behalf of the Administration*,<sup>678</sup> to be applied in conjunction with the Annex to resolution A 739(18.). Resolution A.789(19) has become mandatory under Chapter XI-1 of SOLAS; Chapter I of annex I to annex B of the Protocol of 1988 relating to the International Convention on Load Lines, 1966, and under Annex I and Annex II of MARPOL. Resolution A.789(19) requires for RO's to have the appropriate competence, capability and capacity to perform technical evaluations according to the IMO conventions; it does not require competence in respect of maritime labour conditions. In accordance with IMO Resolution A.739(18), the flag State should establish appropriate control over classification societies, nominated to conduct statutory surveys of ships on their behalf. A nomination can be granted only to a classification society that complies with criteria prescribed by IMO Resolution A.739(18).

Recognising the need to update the afore-mentioned resolutions and gather all the applicable requirements for RO's in a single mandatory instrument, the IMO *Code for recognized organizations (RO Code)* was adopted by IMO Resolution MSC.349(92), 21 June 2013,<sup>679</sup> and by IMO Resolution MEPC.237(65), 17 May 2013.<sup>680</sup> The RO Code took effect on 01 January 2015, upon the entry into force of the respective amendments to SOLAS, 1974, and the 1988 Load Lines Protocol. The RO Code serves as the international standard and consolidated instrument containing minimum criteria against which RO's are assessed towards recognition and authorisation and the

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<sup>677</sup> *Guidelines for the Authorization of Organizations Acting on Behalf of the Administration*, adopted 4 November 1993, IMO Resolution A.739(18). Available at: [http://www.imo.org/blast/blastDataHelper.asp?data\\_id=22588&filename=A739\(18\).pdf](http://www.imo.org/blast/blastDataHelper.asp?data_id=22588&filename=A739(18).pdf) Last visited in March 2020. Amended by Resolution MSC.208(81) (adopted on 18 May 2006).

<sup>678</sup> *Specifications on the survey and certification functions of recognized organizations acting on behalf of the Administration*, adopted 23 November 1995, IMO Resolution A.789(19). Available at: [http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Assembly/Documents/A.789\(19\).pdf](http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Assembly/Documents/A.789(19).pdf) Last visited in March 2020.

<sup>679</sup> *Code for recognized organizations (RO Code)*, adopted 21 June 2013, IMO Resolution MSC.349(92). Available at: [http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Maritime-Safety-Committee-\(MSC\)/Documents/MS.349\(92\).pdf](http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Maritime-Safety-Committee-(MSC)/Documents/MS.349(92).pdf) Last visited in March 2020.

<sup>680</sup> *Code for recognized organizations (RO Code)*, adopted 17 May 2013, IMO Resolution MEPC.237(65). Available at: <http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Marine-Environment-Protection-Committee-%28MEPC%29/Documents/MEPC.237%2865%29.pdf> Last visited in March 2020.

guidelines for the oversight by flag States.<sup>681</sup> The RO Code does not address the competence of RO's in respect of the inspection of maritime labour conditions according to the MLC.

Authorisation of RO's is also specifically addressed in EU legal instruments. Within the EU, Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on the common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations<sup>682</sup> establishes measures to be followed by the Member States in their relationship with organizations entrusted with the inspection, survey and certification of ships. EU Member States can authorise to undertake fully or in part inspections and surveys of their ships only organizations recognised by the Commission in accordance with Regulation (EC) No 391/2009<sup>683</sup> of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organizations. Under Article 5, paragraph 2 of Directive 2009/15/EC, the "working relationship" between their competent administration and the organizations acting on their behalf should be based on IMO legal instruments, i.e., Appendix II of IMO Resolution A.739(18), while drawing inspiration from the Annex, Appendices and Attachment to IMO MSC/Circular 710 and MEPC/Circular 307 on a model agreement for the authorisation of recognised organizations acting on behalf of the administration. Application of the international Conventions related to flag States' obligations are regulated within the EU by Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements.<sup>684</sup>

The RO's have a decisive role to play in this process of improving the treatment of crews. They have a vital interest in ensuring that their inspection and monitoring of ships is up-to-standard and that their name is not associated negatively with deficient vessels listed in the rankings of port State detentions, not only for criteria of efficiency but also for the social responsibility that they themselves should assume, given their important role in the maritime transport industry.<sup>685</sup>

The authorization of classification societies to perform a flag State's functions also receives some criticism. As pointed out by Silos, Piniella, Monedero and Walliser, the initial weakness of

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<sup>681</sup> Paragraph 1, Part 1, RO Code, *supra* note 679.

<sup>682</sup> Directive 2009/15/EC of the European Parliament and of the Council of 23 April 2009 on common rules and standards for ship inspection and survey organizations and for the relevant activities of maritime administrations. Available at: <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32009L0015> Last visited in March 2020.

<sup>683</sup> *Ibid*, Article 3(2).

<sup>684</sup> Directive 2009/21/EC of the European Parliament and of the Council of 23 April 2009 on compliance with flag State requirements. <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:32009L0021> Last visited in March 2020.

<sup>685</sup> Fr. Piniella, J. M. Silos, Fr. Bernal, *supra* note 44, p. 65.

classification societies, their Achilles heel as guardians of ship safety, remains because they are paid by the shipowners and compete for business: they need to be cheaper, i.e. less rigorous than their competitors, in order to stay in business. It is unreasonable for States and international organizations, like the ILO and IMO, to place increasing responsibility on classification societies, which operate for the benefit of the shipping industry, while at the same time leaving them totally exposed to unlimited liability in the event of major maritime accidents, in which they play a subsidiary role.<sup>686</sup>

The authorisation of the RO's raised concern about ensuring some degree of uniformity in the way that RO's are interpreting the Convention's requirements, particularly at the present "infancy" stage when many flag States are still developing the legal details of MLC implementation. To help achieve more harmony, if not uniformity, in connection with the ship inspection obligations, the ILO has adopted ILO Guidelines for flag State inspections under the Maritime Labour Convention, 2006.<sup>687</sup>

In order to compare different RO's approaches to the control of the MLC requirements in respect of the identification of the responsible shipowner in maritime labour relations, the rules and guidelines of several RO's, IACS members, are analysed below. However, it should be noted that not all RO's have posted in their websites publicly available rules and guidelines in respect of the MLC. *Guidelines on implementation of the MLC* of the Russian Maritime Register of Shipping (RS) were available, as well the American Bureau of Shipping (ABS) publication *Guidance Notes on the ILO Maritime Labour Convention, 2006 – 2009* were available, which are cited below.

The Russian Maritime Register of Shipping (RS) is a leading world-known classification society.<sup>688</sup> It has authorisations from more than 60 Maritime Administrations to perform audits for compliance with the MLC requirements.<sup>689</sup> RS has issued *Guidelines on Implementation and Application of the Provisions of the Maritime Labour Convention, 2006* intended for ILO inspectors involved in the conduct of inspection of ships to verify compliance with the MLC and for shipping companies' representatives involved in the preparation for the inspection of ships.<sup>690</sup>

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<sup>686</sup> J. M. Silos, Fr. Piniella, J. Monedero and J. Walliser, "The role of the Classification Societies in the era of globalization: a case study", *Maritime Policy & Management*, Volume 40, Issue 4, 2013, p. 384, 400. Cited in Fr. Piniella, J. M. Silos, Fr. Bernal, *supra* note 44, p. 60.

<sup>687</sup> ILO Guidelines for flag State inspections under the Maritime Labour Convention, 2006 were adopted September 2008. Available at: [https://www.ilo.org/global/standards/maritime-labour-convention/WCMS\\_101788/lang-en/index.htm](https://www.ilo.org/global/standards/maritime-labour-convention/WCMS_101788/lang-en/index.htm) Last visited in March 2020; M. L. McConnell, *supra* note 306.

<sup>688</sup> See <https://rs-class.org/en/register/about/> Last visited in March 2020.

<sup>689</sup> See <https://rs-class.org/en/services/working-and-rest-conditions-for-seafarers/> Last visited in March 2020.

<sup>690</sup> Russian Maritime Register of Shipping: *Guidelines on Implementation and Application of the Provisions of the Maritime Labour Convention, 2006* ND No. 2-080101-015-E Implemented since: 18.01.2019. St. Petersburg 2019,

The RS Guidelines define the term “shipowner” as follows:

*39) 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 the MLC, 2006 requirements, regardless of whether any other organization or persons fulfil certain duties or responsibilities on behalf of the shipowner (refer to paragraph 1 j), Article II of the MLC, 2006).*

*This definition means that the shipowner is the same person as the company as defined in the ISM Code unless otherwise specified by the flag State Administration.<sup>691</sup>*

Additionally, Article 4.5 *Shipowner* of the RS Guidelines gives a more detailed explanation:

#### **4.5 Shipowner**

*4.5.1 Pursuant to the MLC, 2006 a 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 or another organization or another person and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with the MLC, 2006 regardless of whether any other organization or persons fulfil certain duties or responsibilities on behalf of the shipowner. Based on the definition, in order to become a shipowner with regard to the MLC, 2006, a person shall do the following: 1) assume the responsibility for the operation of a ship, and 2) agree to take over all the duties and responsibilities imposed on shipowners in accordance with the MLC, 2006.*

*4.5.2 Pursuant to the ISM Code, a company means the owner of the ship or any other organization or person such as the manager, or the bareboat charterer, who has assumed the responsibility for the operation of the ship from the shipowner and who on assuming such responsibility, has agreed to take over the duties and responsibilities imposed by the ISM Code.*

*4.5.3 It is obvious that these definitions are identical and specify the requirement to the person to assume the responsibility for the operation of the ship. In view of this, it is possible to conclude that with regard to the same ship, only one person can be a shipowner as per the MLC, 2006 and a company as per the ISM Code. This approach is recognized by nearly all flag States.*

*4.5.4 Pursuant to IMO resolution A.1047(27), the Minimum Safe Manning Document contains the name of the operating company. Cases when with regard to the same ship the shipowner as per the MLC, 2006 and the company as per the ISM Code may be different entities, shall be allowed only by permission of the competent authority of the flag State (Liberia).*

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Article 1.1. Available at: <https://rs-class.org/en/services/working-and-rest-conditions-for-seafarers/> Last visited in March 2020.

<sup>691</sup> *Ibid*, Article 1.3. 39.

In respect of the signing of SEA's the RS Guidelines specify (author's underlining):

6.5.2 *Each seafarer shall have a written employment agreement concluded with the shipowner. The peculiarity of the seafarers' employment agreement is its stability associated with certainty of the content of labour function, place of its fulfillment and other conditions of the employment agreement. The shipowner shall conclude the employment agreement with the seafarer so that the applicant had enough time to examine the document and receive necessary consultations on this matter.*

6.5.3 *The content of the seafarers' employment agreement is determined not only by the provisions of the MLC, 2006 but also by national legislation, as well as by the mutual consent between the employee and employer on the conditions of the employment agreement. The minimum content of the employment agreement, its substantial provisions shall be established by the national legislation and shall not be in contradiction with the provisions established by the MLC, 2006.*

6.5.4 *Generally, apart from those specified in Standard A2.1, the following articles are set forth in the seafarers' employment agreement:*

- 1) *place and indication of the structural division where the seafarer is employed;*
- 2) *employment commencement date;*
- 3) *rights and duties of the seafarer and shipowner including observance of occupational safety and health requirements;*
- 4) *conditions of remuneration including wage rates or official salary, additional payments and allowances, bonuses or the formula for calculating wages;*
- 5) *schedule of hours of work and hours of rest per day, per week, per month, annual leave duration;*
- 6) *conditions of upgrading;*
- 7) *free medical care, social security, medical and social insurance;*
- 8) *any other particulars which national legislation may require.*

6.5.5. *In case the shipowner's representative signs the seafarers' employment agreement, the agreement shall contain information about the employer's/ the representative who has signed the seafarers' employment agreement and the reason whereby he/she is given appropriate authority.*

*To prove compliance with this Standard of the MLC the shipowner shall demonstrate that:*

- 1) *seafarers' employment agreements have been translated into English or there is a standard form of the agreement in English;*
- 2) *where a collective bargaining agreement forms all or part of the seafarers' employment agreement, the agreement shall be on board the ship with relevant provisions in English;*
- 3) *period of validity of the seafarers' employment agreement has not expired;*
- 4) *seafarers' employment agreement contains all necessary essential conditions established by the provisions of the MLC, 2006 and national legislation.*<sup>692</sup>

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<sup>692</sup> *Supra* note 690, Article 6.5.8.

The American Bureau of Shipping (ABS)<sup>693</sup> has prepared the publication *Guidance Notes on the ILO Maritime Labour Convention, 2006 – 2009*. The ABS Guidance Notes contain the following definitions of “company” and “shipowner”:

*company*

*The owner of the ship or other organization or person such as the manager, or bareboat charterer, who has assumed the responsibility for operation of the ship from the shipowner and who on assuming such responsibility has agreed to take over all the duties and responsibility imposed by the Code [ISM Code, 1.1.2] (See also shipowner)*

*shipowner*

*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 fulfill certain of the duties or responsibilities on behalf of the shipowner [Article II, paragraph 1(j)] (See also Company)*  
*Any natural or legal person who receives services or labor from the worker or crewmember [Panama, Law Decree No. 8, Article 3]<sup>694</sup>*

Under Title 2: *Conditions of employment* STD 2.1.1 *Seafarers employment agreements* of the ABS Guidance Notes, mandatory requirements for the conclusion of the SEA are given (author’s underlining):<sup>695</sup>

*Each Member shall adopt laws or regulations requiring that ships that fly its flag comply with the following requirements*

*(a) Seafarers working on ships that fly its flag shall have a seafarers’ employment agreement signed by both the seafarer and the shipowner or a representative of the shipowner (or, where they are not employees, evidence of contractual or similar arrangements) providing them with decent working and living conditions on board the ship as required by this Convention*

*(b) seafarers signing a seafarers’ employment agreement shall be given an opportunity to examine and seek advice on the agreement before signing, as well as such other facilities as are necessary to ensure that they have freely entered into an agreement with a sufficient understanding of their rights and responsibilities;*

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<sup>693</sup> ABS Publication *Guidance Notes on the ILO Maritime Labour Convention, 2006 – 2009, May 2009* (updated October 2010). Available at: [https://ww2.eagle.org/content/dam/eagle/rules-and-guides/current/other/164\\_ilomaritimelabourconvention2006/ilo\\_gn\\_e-oct10.pdf](https://ww2.eagle.org/content/dam/eagle/rules-and-guides/current/other/164_ilomaritimelabourconvention2006/ilo_gn_e-oct10.pdf) Last visited in March 2020.

<sup>694</sup> *Ibid*, Appendix 4, 1 Definitions.

<sup>695</sup> *Supra* note 693, p. 54.

*(c) the shipowner and seafarer concerned shall each have a signed original of the seafarers' employment agreement;*

*(d) measures shall be taken to ensure that clear information as to the conditions of their employment can be easily obtained on board by seafarers, including the ship's master, and that such information, including a copy of the seafarers' employment agreement, is also accessible for review by officers of a competent authority, including those in ports to be visited; and*

*(e) seafarers shall be given a document containing a record of their employment on board the ship.*

Next follows methods to achieve compliance with the above-mentioned requirements, which specify:

*Where manning agents sign seafarer employment agreements on behalf of the shipowner, the responsibility of the manning agents should be clearly defined in the contractual agreements between the shipowner and the manning agents.<sup>696</sup>*

The conclusion is that the RS Guidelines precisely state that in most cases the shipowner in respect of the MLC obligations is the ISM Company. The ABS Guidance Notes contain the definition of "shipowner" as per the MLC, not specifying who can actually be the shipowner. In respect of information on the shipowner in the SEA, the guidelines of both RO's specify that in the case that the SEA is signed by a third party, clear information on the basis of authorisation of that person should be enclosed. RO's as authorised persons on behalf of flag States in inspecting ships have to take into account national regulation of that particular flag State. If the national law implementing the MLC allows the SEA to be signed only by the third party without enclosing information on its authorisation from the shipowner, then the RO has no reason to apply stricter rules.

#### ***5.2.4. Flag State responsibility to arrange repatriation***

Under the MLC *Regulation 2.5 – Repatriation* the flag State not only shall ensure that repatriation is provided by the shipowner from the ship flying its flag (by establishing appropriate regulations and control, requiring to arrange financial security, etc.) but the flag State, itself, has the obligation to repatriate a seafarer if the shipowner fails to perform his duties:

*5. If a shipowner fails to make arrangements for or to meet the cost of repatriation of seafarers who are entitled to be repatriated:*

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<sup>696</sup> *Supra* note 693, p. 54.

*(a) the competent authority of the Member whose flag the ship flies shall arrange for repatriation of the seafarers concerned; if it fails to do so, the State from which the seafarers are to be repatriated or the State of which they are a national may arrange for their repatriation and recover the cost from the Member whose flag the ship flies;*

*(b) costs incurred in repatriating seafarers shall be recoverable from the shipowner by the Member whose flag the ship flies;*

*(c) the expenses of repatriation shall in no case be a charge upon the seafarers, except as provided for in paragraph 3 of this Standard.<sup>697</sup>*

The flag State also has the obligation to compensate any repatriation costs if the repatriation of a seafarer from a ship flying its flag is done by another State, for example, by the State from which a seafarer is to be repatriated or by the State of which a seafarer is a national.<sup>698</sup> In such cases, the flag State, whose flag the ship flies, has rights to recover paid costs from the respective shipowner.<sup>699</sup> A Member State who had paid the cost for repatriation can also detain the ship of the shipowner concerned according to the applicable international Conventions, including the Arrest Convention 1999.<sup>700</sup>

In any case, a Member State shall not refuse the right of repatriation to any seafarer because of the financial circumstances of the shipowner or because of the shipowner's inability or unwillingness to replace the seafarer.<sup>701</sup>

Taking into account the mandatory financial security requested by the MLC amendments 2014, the cases where a flag State is obligated to arrange repatriation should, theoretically, be very rare. The reports on abandonment of seafarers, mentioned in Chapter 5.1.3. of the thesis, do not contain information on cases where a flag State has paid for seafarers' repatriation.

### **5.3. Labour supplying responsibilities**

The SRPS is an essential part of the functioning of the international maritime labour market. Manning agencies and crewing companies, as subsidiaries of shipping companies or ship management companies, or as independent entities, are responsible for selecting and recruiting

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<sup>697</sup> Standard A2.5.1, paragraph 5, MLC.

<sup>698</sup> Standard A2.5.1, paragraph 5 (a), MLC.

<sup>699</sup> Standard A2.5.1, paragraph 5 (b), MLC.

<sup>700</sup> Standard A2.5.1, paragraph 6, MLC.

<sup>701</sup> Standard A2.5.1, paragraph 8, MLC.

seafarers and, more or less, are directly involved in the employment of seafarers. Therefore, Member States' responsibility for the operation of SRPS in their territory is also addressed in the MLC. Article 2 (1) (h) of the MLC defines seafarer recruitment and placement services as:

*any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners;*

According to the EU report *Final report of the study on the implementation of labour supplying responsibilities pursuant to the Maritime Labour Convention (MLC 2006)* concluded in October 2015<sup>702</sup>, SRPS can operate under different schemes, including independent manning agencies, crewing companies, ship management companies, branches of shipping companies and web job-boards.<sup>703</sup>

In order to ensure that all seafarers have access to an efficient, adequate and accountable system for finding employment on board a ship, all SRPS in a state's territory shall be supervised and controlled by the competent authority.<sup>704</sup> As part of an efficient and well-regulated seafarers' recruitment and placement system under the MLC the following obligations of the Member State can be mentioned:

- 1) supervise and control all seafarer RPS in its territory;<sup>705</sup>
- 2) ensure that private RPS operating in its territory have established a system of protection to compensate seafarers for monetary loss;<sup>706</sup>
- 3) require that ships that fly its flag use foreign RPS that conform to the MLC;<sup>707</sup>

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<sup>702</sup> Final report of the study on the implementation of labour supplying responsibilities pursuant to the Maritime Labour Convention (MLC 2006) concluded in October 2015, prepared accordance with the Article 6(2) of Directive 2013/54/EU of the European Parliament and of the Council of 20 November 2013 concerning certain flag State responsibilities for compliance with and enforcement of the Maritime Labour Convention, 2006, which states that not later than 31 December 2018, the Commission shall submit a report to the European Parliament and to the Council on the implementation and application of Regulation 5.3 of MLC, 2006 regarding labour-supplying responsibilities. Available at: [http://ec.europa.eu/transport/modes/maritime/studies/maritime\\_en.htm](http://ec.europa.eu/transport/modes/maritime/studies/maritime_en.htm). Last visited in March 2020.

<sup>703</sup> *Ibid*, p. 54: (...) *In the case of the UK for instance, the RPS are divided to "employment businesses" and "employment agencies", both considered under the MLC, 2006 RPS definition, but with different licensing obligations. Further, in Cyprus there are companies providing information and selection services for seafarers that are not resident in Cyprus (i.e. foreign crews) and these are not certified as RPS in Cyprus. The representative of the Cyprus FS mentioned the suggestion that these entities should be certified in the state of origin, meaning by the country authorities whose seafarers they select.*

<sup>704</sup> Standard A1.4, paragraph 6, MLC.

<sup>705</sup> Regulation 1.4– *Recruitment and placement*, MLC.

<sup>706</sup> Standard A1.4, paragraph 5 (c) (vi), MLC.

<sup>707</sup> Standard A1.4, paragraph 9, MLC.

4) assume a responsibility on recruitment and placement, as well as on the social security regarding all of its nationals or residents or otherwise domiciled in its territory.<sup>708</sup>

Since shipowners ever more frequently use the services of specialised recruitment and placement agencies for the manning of their ships there could be more attention paid for regulation of SRPS in the MLC.

### **5.3.1. Certification and control of SRPS**

Standard A1.4. – *Recruitment and placement* of the MLC addresses public RPS,<sup>709</sup> private RPS<sup>710</sup> and RPS operated by a seafarers' organization in the territory of the Member for the supply of seafarers who are nationals of that Member to ships which fly its flag.<sup>711</sup> Standard A.1.4, paragraph 5 of the MLC lists minimum obligations for private SRPS, applicable also to SRPS operated by a seafarers' organization on the basis of Standard A1.4, paragraph 3 (d) of the MLC:

- (i) maintain an up-to-date register of all seafarers recruited or placed through them, to be available for inspection by the competent authority;*
- (ii) make sure that seafarers are informed of their rights and duties under their employment agreements prior to or in the process of engagement and that proper arrangements are made for seafarers to examine their employment agreements before and after they are signed and for them to receive a copy of the agreements;*
- (iii) verify that seafarers recruited or placed by them are qualified and hold the documents necessary for the job concerned, and that the seafarers' employment agreements are in accordance with applicable laws and regulations and any collective bargaining agreement that forms part of the employment agreement;*
- (iv) make sure, as far as practicable, that the shipowner has the means to protect seafarers from being stranded in a foreign port;*
- (v) examine and respond to any complaint concerning their activities and advise the competent authority of any unresolved complaint;*
- (vi) establish a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers' employment agreement to meet its obligations to them.<sup>712</sup>*

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<sup>708</sup> Regulation 5.3. – *Labour-supplying responsibilities*, MLC.

<sup>709</sup> Standard A1.4, paragraph 1, MLC.

<sup>710</sup> Standard A1.4, paragraph 2, MLC.

<sup>711</sup> Standard A1.4, paragraph 3, MLC.

<sup>712</sup> Standard A1.4, paragraph 5 (c), MLC.

It follows from the above-mentioned paragraphs (ii) and (iii) that an SRPS has a considerable responsibility in respect of verifying the SEA content and providing a seafarer with necessary information and his rights under the SEA. Although it is not mentioned expressly it can be concluded from the above that the SRPS has the obligation to ensure that a seafarer has information on the responsible shipowner and the shipowner's contact information. Taking into account the SRPS obligation to inform a seafarer about the SEA and the obligation to verify shipowner's means for an abandonment case (paragraph (iv) above), it can be concluded that the SRPS obligation is to inform and explain to the seafarer, particularly, his rights in case of abandonment and how financial security for repatriation and contractual claims work.

The competent authority shall closely supervise and control all SRPS operating in the territory of the Member concerned according to the standardised system of licensing or certification.<sup>713</sup>

### ***5.3.2. SRPS's system of protection***

Special attention should be devoted to the system of protection required under Standard A1.4, paragraph 5 (c) (vi) of the MLC. Similarly, like the requirement for the shipowner to have financial security, this standard has also created questions about the practical implementation of it. Unlike the requirement for shipowners to take out financial security, which has got more clarity through the changes made by the MLC amendments 2014, provisions on a system of protection for SRPS has not been changed.

The historical source of this requirement is Article 4 (2) (f) of Convention No. 179,<sup>714</sup> which entered into force on 22 April 2000. Since it was ratified only by 10 countries this requirement has no widespread application. Article 4 (2) (f) of Convention No. 179 states that a Member State shall ensure that the competent authority:

*(...) (f) ensure that a system of protection, by way of insurance or an equivalent appropriate measure, is established to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service to meet its obligations to them.*

However, there is a big difference between this requirement in the MLC and in Convention No. 179. If a system of protection under Convention No. 179 requires the cover of a SRPS's failure,

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<sup>713</sup> Standard A1.4. – Recruitment and placement, paragraph 2 and 6, MLC.

<sup>714</sup> Convention No. 179, *supra* note 162.

then a system of protection under the MLC is required to cover a SRPS's failure as well as the failure of the relevant shipowner. Accordingly, the scope of the SRPS system of protection under the MLC has been considerably extended.

Guideline B5.3 – *Labour-supplying responsibilities*, paragraph 1 of the MLC also points to obligations of SRPS in respect of shipowner's responsibility:

*1. Private seafarer recruitment and placement services established in the Member's territory and securing the services of a seafarer for a shipowner, wherever located, should be required to assume obligations to ensure the proper fulfilment by shipowners of the terms of their employment agreements concluded with seafarers.*<sup>715</sup>

But the above-mentioned is only a guideline; it does not require expressly for SRPS to take responsibility for the shipowner's failure to fulfil the terms of the SEA.

In practice, the implementation of this requirement can create problems for labour supplying countries where many private SRPS are operating only as agents to recruit seafarers for foreign ships. Usually these private SRPS are financially not able to establish a system of protection to cover shipowner's liability in respect of seafarers. P&I Clubs do not provide insurance cover arrangements for crewing agencies but provide cover only for shipowner and ship operator liabilities to third parties. While SRPS are not eligible to enter P&I Clubs, they seem to need an insurance cover against the risks they are exposed to due to Standard A1.4, paragraph (5)(c)(vi) of the MLC – for unpaid wages, which is a major liability and needs to be insured.<sup>716</sup> Of course, SRPS before concluding the contract with the shipowner, can ask the shipowner to provide some evidence that the shipowner has the means to protect seafarers from being stranded in a foreign port:<sup>717</sup> that the shipowner has valid insurance cover for a seafarers' abandonment and contractual claims. But it does not exclude the SRPS risk to be exposed to shipowner liability later when the insurance is terminated or there are other obstacles interfering with the appropriate and timely assistance to seafarers.

The concerns with regard to the SRPS system of protection of seafarers required by Standard A1.4, paragraph 5(c)(vi) of the MLC was raised several times in ILO meetings by

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<sup>715</sup> Guideline B5.3 – *Labour-supplying responsibilities*, paragraph 1, MLC.

<sup>716</sup> *Supra* note 702, p. 71.

<sup>717</sup> Standard A1.4 – recruitment and placement, paragraph 5 (c) (iv), MLC.

Member States. At the meeting of the Preparatory Tripartite MLC, 2006 Committee (Geneva, 20-22 September 2010), Latvia asked:<sup>718</sup>

*The representative of the Government of Latvia asked a question concerning the criteria that would be applied with respect to the establishment by seafarer recruitment and placement services of an adequate system of compensation, by way of insurance or an equivalent appropriate measure, as provided for in Standard A1.4, paragraph 5(c)(vi).*

This answer was given:

*The Deputy Secretary-General explained that the intention seemed to be that an adequate amount should be available to cover the risks of monetary loss due to the failure by the recruitment service or the relevant shipowner to meet their obligations. It was also reasonable to require a seafarer to promptly draw attention to violations, such as nonpayment of wages, so that the risk could be limited to one or two months only of unpaid wages.<sup>719</sup>*

At the first meeting of the Special Tripartite Committee established under Article XIII of the Maritime Labour Convention, 2006 (Geneva, 7–11 April 2014) concern in respect of the implementation of Standard A1.4, paragraph 5(c)(vi) was expressed by the UK:

*The representative of the Government of the United Kingdom indicated that his Government had some concerns with regard to the system of protection of seafarers. Standard A1.4, paragraph 5(c)(vi), of the Convention established a system to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers' employment agreement (SEA) to meet its obligations to them. While the MLC, 2006, aimed to create decent conditions and a level playing field for shipowners, that provision was open to wide interpretation. He expressed the hope that through the present discussions, guidance or proposals for amendments for future meetings could be developed. Specific issues included, inter alia, the nature of the losses to be covered; the nature of the organizations to be covered and whether the recruiter and shipowner might be expected to cover the same obligations; the legal feasibility of a legal entity obtaining insurance in respect of seafarers for whom that entity no longer had a contractual relationship; the commercial viability of such insurance for small businesses and possible equivalent appropriate measures.<sup>720</sup>*

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<sup>718</sup> See Final report of Preparatory Tripartite MLC, 2006, Committee - Geneva, 20-22 September 2010, PTMLC/2010/4, paragraph 134, *supra* note 236.

<sup>719</sup> See Final report of Preparatory Tripartite MLC, 2006, Committee - Geneva, 20-22 September 2010, PTMLC/2010/4, paragraph 135, *supra* note 236.

<sup>720</sup> Report of the first meeting of the Special Tripartite Committee established under Article XIII of the Maritime Labour Convention, 2006 (Geneva, 7–11 April 2014). Report of the Chairperson to the Governing Body, in accordance with Article 16 of the Standing Orders of the Special Tripartite Committee, GB.322/LILS/3, paragraph 409, *supra* note 236.

The Seafarers' spokesperson at the same meeting raised the question of whether employment agencies were covered under the MLC; because, unlike employment and recruitment services, the MLC was silent with regard to the former. With reference to the Private Employment Agencies Convention, 1997 (Convention No. 181), he asked the Office for clarification on this issue.<sup>721</sup> It should be noted that Convention No. 181 does not apply to the recruitment and placement of seafarers.<sup>722</sup>

There was the following discussion in respect of the questions from the UK and Seafarers' group:

*411. (...) The representative of the Government of the Philippines indicated that, in his country, employment agencies could directly hire seafarers, were considered as direct employers under the law and were covered by the national Labour Code. Otherwise, the seafarer was hired by an agency, which fell under the national recruitment and placement laws. Those laws went beyond the requirements of Standard A1.4 by instituting a licensing system for recruitment and/or manning agencies with requirements as regards capitalization and an escrow of 1 million pesos for claims. In addition, there was joint and several liability on the part of recruitment and/or manning agencies and shipowners in relation to seafarers' money claims, as well as joint and several liability for officers and employees of such agencies, who could be personally liable. The representative of the Government of Norway considered that the points raised by the United Kingdom pointed to a legal ambiguity in Standard A1.4, paragraph 5(c)(vi), which could result in difficulties to obtain insurance for relevant businesses. This problem had been examined when the principles of the Recruitment and Placement of Seafarers Convention, 1996 (No. 179), had been incorporated in the MLC, 2006, and they might wish to deal with the issue in the future. (...). The representative of the Government of Singapore explained that, in Singapore, there were three situations of recruitment of seafarers: recruitment by recruitment and placement agencies; recruitment by shipowner subsidiary companies; and recruitment by the shipping companies. Licences were only required in the first two cases. However, all three cases had to comply with the requirements of Standard A1.4. Recruitment and placement services could opt to use insurance or a bank guarantee, among other options, to provide seafarers with a system of protection under MLC, 2006, Standard A1.4, paragraph 5(c)(vi).<sup>723</sup>*

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<sup>721</sup> Report of the first meeting of the Special Tripartite Committee established under Article XIII of the Maritime Labour Convention, 2006 (Geneva, 7–11 April 2014). Report of the Chairperson to the Governing Body, in accordance with Article 16 of the Standing Orders of the Special Tripartite Committee, GB.322/LILS/3, paragraph 410, *supra* note 236.

<sup>722</sup> Article 2 (2), Private Employment Agencies Convention, 1997 (Convention No. 181). Available at: [https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312326](https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_INSTRUMENT_ID:312326) Last visited in March 2020.

<sup>723</sup> Report of the first meeting of the Special Tripartite Committee established under Article XIII of the Maritime Labour Convention, 2006 (Geneva, 7–11 April 2014). Report of the Chairperson to the Governing Body, in accordance with Article 16 of the Standing Orders of the Special Tripartite Committee, GB.322/LILS/3, paragraph 411, *supra* note 236.

At the second meeting of the Special Tripartite Committee established under Article XIII MLC, 2006 (Geneva, 8–10 February 2016), Latvia raised this question again:<sup>724</sup>

*20. A representative of the Government of Latvia noted certain issues arising under paragraph 5(c)(vi) of Standard A1.4 of the Convention in relation to the system of protection that was to be established by seafarer recruitment and placement services to compensate seafarers for losses incurred as a result of the failure of such services to meet their obligations. Her country had about 50 licensed private seafarer recruitment and placement services which recruited seafarers for foreign shipping companies. The functions of such recruitment and placement services varied, with some retaining responsibility for the payment of seafarers' wages while on service, and others having no further obligations beyond the recruitment of seafarers. The latter still needed to establish a system of protection, which was not proportional to the obligations that they fulfilled in respect of the seafarer's recruitment and placement. She added that the reference to "monetary loss" in this provision was unclear, with no indication of the period covered or the liability of the shipowner in this respect. She invited member States to share their experience in this regard, for example on the measurement of monetary loss, the period of time, whether adequate insurance by the shipowner offered appropriate protection, and any further considerations that should be taken into account. She also sought the opinion of governments and the social partners on whether this requirement might need to be amended in future.*

There were the following opinions and comments from participants from India and the UK:

*22. A representative of the Government of India, with reference to the question raised by the representative of the Government of Latvia, considered that the protection system that recruitment and placement services were required to establish should offer basic guarantees. However, that being insufficient, if all the ships flying the flag of ratifying countries had in place financial security systems, then the issue raised by Latvia would be better addressed.*

*23. A representative of the Government of the United Kingdom concurred with the concerns raised by the representative of the Government of Latvia. (...)<sup>725</sup>*

The lack of interest in this issue from the side of other Member States is explained by the fact that not all countries are familiar with this issue; because, not all countries who were there are operating private SRPS.

The fourth edition of the *ILO's Maritime Labour Convention, 2006 – Frequently Asked Questions* prepared by the ILO contains an answer to the question *What is the system of protection*

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<sup>724</sup> Final report of Second meeting of the Special Tripartite Committee established under Article XIII MLC, 2006 (Geneva, 8–10 February 2016), paragraph 20, *supra* note 236.

<sup>725</sup> Final report of Second meeting of the Special Tripartite Committee established under Article XIII MLC, 2006 (Geneva, 8–10 February 2016), paragraph 22-23, *supra* note 236.

*against monetary loss that is required of private seafarer recruitment and placement services according to the Standard A1.4, paragraph 5(c)(vi) of the MLC:*

*The obligation on the ratifying country is not to provide this system of protection but rather, in the system that it adopts (pursuant to Standard A1.4, paragraph 2), to regulate these services through laws or regulations or other measures. The MLC, 2006 does not specify the form of this system, other than referring to insurance or an equivalent measure. The term “monetary loss” is not defined and the Convention does not specify the scope of that term, which covers financial loss suffered. However, it may be useful to also consider the system in light of the many provisions in the MLC, 2006 including those in the recently adopted Amendments of 2014 to the Maritime Labour Convention, 2006, approved by the Conference at its One Hundred and Third Session, Geneva, 11 June 2014, 41 where shipowners are required to provide some form of insurance or other financial guarantees to cover potential monetary losses – for example, Regulation 2.5 (repatriation), Regulation 4.2 (shipowners’ liability in the event of illness, etc.) and Regulation 2.6 (ship’s foundering). For example, in connection with unemployment indemnification, the latter provides for the possibility of limiting liability to two months.<sup>726</sup>*

The explanation above leads one to think that an SRPS system of protection is the SRPS regulation and certification system adopted by the Member State. On the other hand, it could also be some form of insurance or other financial guarantee.

The following notes of the CEACR create doubt whether effective SRPS regulation and certification system adopted by the Member State is enough to ensure the full implementation of Standard A1.4, paragraph 5(c)(vi) of the MLC and what is actually required for the effective implementation of this MLC requirement.

The CEACR note in respect of the implementation of the mentioned requirement in Estonian national law:

*The Committee notes the Government’s indication that, according to paragraph 72 of the SEA, any proprietary damage suffered by a crew member due to an employment placement service provider’s failure to perform its obligations or improper performance of obligations shall be compensated for by the service provider pursuant to the procedure for compensation for damage provided by the Law of Obligations Act. The Committee recalls that a Member adopting private seafarer recruitment and placement system, shall ensure that seafarer recruitment and placement services operating in its territory establish a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers’ employment agreement to meet its obligations to them (Standard A1.4,*

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<sup>726</sup> ILO publication: FAQ on the MLC, p. 34, *supra* note 240.

paragraph 5(c)(vi)). **The Committee requests the Government to indicate the measures taken to give effect to this specific requirement of the Convention.**<sup>727</sup>

Estonia is asked to reply in full to the present comments by 2022.<sup>728</sup>

In respect of the system of protection of SRPS in Bulgaria, the CEACR noted in 2019:

*The Committee requested the Government to indicate how effect is given to this requirement of the Convention. The Committee notes the Government's answer that national legislation does not contain an explicit text regulating this issue. The Government further refers to the Ordinance on the conditions and order for performance of mediation activities for employment, section IV "Mediation activities on employment of sailors", article 34, (as amended – SG, Issue 52 dated 2006), according to which mediation activities for employment of seafarers are implemented in line with the requirements of the Conventions of the ILO and the IMO, ratified and enforced for the Republic of Bulgaria. While noting this information, the Committee recalls that paragraph 5(c)(vi) of Standard A1.4 provides that a Member adopting private seafarer recruitment and placement services shall, in its laws and regulations or other measures, at a minimum establish a system of protection such as an insurance arrangement, to ensure that seafarers can be duly compensated for any monetary loss caused by the recruitment and placement services or the relevant shipowner. **The Committee consequently requests the Government to adopt concrete measures in order to give full effect to this requirement of the Convention.***<sup>729</sup>

The Netherlands, in respect of implementing this standard, explained to the CEACR:

*Two situations have to be distinguished: (i) first, regarding recruitment services, given that they are only an intermediary and not a party to the employment contract, it is not necessary to foresee a system of protection because if the employment service fails to fulfil its services, no contract will be established between the seafarer and the employer. In this case, a seafarer is free to seek the services of a private employment service and if this private employment service fails to deliver, the seafarer can abandon their services without costs; (ii) the second situation concerns placement services by temporary working agencies which put a person at the disposal of a third party (intaker). In this case, national provisions were adopted, as a security, to ensure protection for seafarers who are temporary employees aboard a ship flying the Dutch flag. Therefore, the intaker (the shipowner) is responsible for various duties, if the employer, in that case the employment agency, fails to meet its obligations (article 7:693 CC); and (iii) articles 8:211, b CC and 8:216 CC provide*

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<sup>727</sup> See Direct Request (CEACR) - adopted 2019, published 109th ILC session (2020). Maritime Labour Convention, 2006 (MLC, 2006) - Estonia (Ratification: 2016). CEACR note in respect of Regulation 1.4 and Standard A1.4, paragraph 5(c)(vi). Recruitment and placement. System of protection, *supra* note 165.

<sup>728</sup> *Ibid.*

<sup>729</sup> See Direct Request (CEACR) - adopted 2019, published 109th ILC session (2020). Maritime Labour Convention, 2006 (MLC, 2006) – Bulgaria (Ratification: 2010). CEACR note in respect of Regulation 1.4 and Standard A1.4, paragraph 5(c)(vi). Recruitment and placement. System of protection, *supra* note 165.

*protection with respect to claims arising from sea-employment contracts regarding remuneration, salary or rewards, which are recoverable.*<sup>730</sup>

The CEACR, in answer to the Netherlands explanation, noted that the MLC establishes the same obligations for all SRPS and that both kind of agencies should, therefore, be required to have a system of protection to compensate seafarers for monetary loss; the CEACR then requested the Government to adopt the necessary measures to give full effect to the obligation under Standard A1.4, paragraph 5(c)(vi) of the MLC both for employment services and for temporary working agencies.<sup>731</sup>

The Maritime Labour Act of Poland provides that an employment agency shall have insurance or other financial guarantees with respect to liability for damages incurred by seafarers as a result of inefficiency of job agency services or the shipowner's failure to meet obligations arising from the seafarers' employment agreement. The responsibility of the agency is limited to three months' wages, specified in the SEA. Recalling that such limitation is not foreseen in Standard A1.4, paragraph 5(c)(vi) of the MLC, the Committee requested clarification concerning the limitations to the liability of SRPS.<sup>732</sup>

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<sup>730</sup> See Direct Request (CEACR) - adopted 2019, published 109th ILC session (2020). Maritime Labour Convention, 2006 (MLC, 2006) – Netherlands (Ratification: 2011). Regulation 1.4 and Standard A1.4, paragraph 5(c)(vi). Recruitment and placement. System of protection, *supra* note 165.

<sup>731</sup> See Direct Request (CEACR) - adopted 2019, published 109th ILC session (2020). Maritime Labour Convention, 2006 (MLC, 2006) – Netherlands (Ratification: 2011). Regulation 1.4 and Standard A1.4, paragraph 5(c)(vi). Recruitment and placement. System of protection, *supra* note 165:

*First, the Committee recalls that the Convention establishes the same obligations for recruitment and placements services. Both kind of agencies should therefore be required to have a system of protection to compensate seafarers for monetary loss. Second, while noting that a system of protection was established to cover cases in which seafarers incur in monetary loss as a result of the failure of a temporary working agency to meet its obligations to them, the Committee notes that there is no reference to measures put in place to compensate seafarers when the monetary loss results from the failure of the relevant shipowner. The Committee recalls that Standard A1.4, paragraph 5(c)(vi), requires that insurance or an equivalent appropriate measure must also be in place to compensate seafarers for monetary loss they may incur as a result of the failure of a recruitment and placement service “or the relevant shipowner under the seafarers’ employment agreement to meet its obligations to them”. **The Committee requests the Government to adopt the necessary measures to give full effect to the obligation under Standard A1.4, paragraph 5(c)(vi), both for employment services and temporary working agencies.***

<sup>732</sup> See Direct Request (CEACR) - adopted 2019, published 109th ILC session (2020). Maritime Labour Convention, 2006 (MLC, 2006) – Poland (Ratification: 2012). Regulation 1.4, paragraph 3. Standard A1.4, paragraphs 5(c)(vi) and 9. Recruitment and placement, *supra* note 165:

*Concerning the system of protection that recruitment and placement services are required to establish, the Committee notes that section 23(1) of the MLA provides that the employment agency shall have insurance or other financial guarantees with respect to liability for damages incurred by seafarers as a result of inefficiency of job agency services or the shipowner's failure to meet obligations arising from the seafarers' employment agreement. The same section of the MLA seems to limit the responsibility of the agency to three months' wages specified in the seafarer employment agreement. **Recalling that such limitation is not foreseen in Standard A1.4, paragraph 5(c)(vi), the Committee requests the Government to provide clarifications concerning the limitations to the liability of recruitment and placement services.** Furthermore, the Committee notes that the Government has not provided information on how it ensures that shipowners of ships that fly its flag, who use seafarer recruitment and placement services based in countries or territories in which this Convention does not apply, respect, as far as practicable, that those services*

Under Serbian law, a SRPS is required to have an insurance policy for professional liability for financial losses that the seafarer is subject to as a result of omission in the work of the SRPS in the amount of at least €5,000.00 in Serbian dinar counter-value per event. The government of Serbia indicated to CEACR that there is also the obligation for the shipowner and/or employer to conclude an insurance or other financial guarantee for the purpose of paying the costs of repatriation of the members of the crew as required by the MLC amendments 2014. In answer to this, CEACR noted that the obligation to provide financial security in conformity with the amendments to the MLC does not affect the obligations under Standard A1.4, paragraph 5(c)(vi) of the MLC and requested to indicate the measures taken to give effect to Standard A1.4, paragraph 5(c)(vi), to compensate seafarers for monetary loss in case of failure of the relevant shipowner under the seafarers' employment agreement to meet its obligations to them.<sup>733</sup>

Singapore has implemented this requirement in national law by copying the MLC text of this requirement into national law without providing detailed provisions on how to ensure this requirement in practice. The CEACR requested detailed information with respect to this system of protection that is required under national law.<sup>734</sup>

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*meet the requirements of this Standard, as required by Standard A1.4, paragraph 9. **The Committee requests the Government to provide information in this regard.***

<sup>733</sup> See Direct Request (CEACR) - adopted 2019, published 109th ILC session (2020). Maritime Labour Convention, 2006 (MLC, 2006) –Serbia (Ratification: 2013). Regulation 1.4 and Standard A1.4, paragraph 5(c)(vi). Recruitment and placement. System of protection, *supra* note 165:

*Recalling that Standard A1.4, paragraph 5(c)(vi), requires that insurance or an equivalent appropriate measure must be in place to compensate seafarers for monetary loss they may incur as a result of the failure of a recruitment and placement service “or the relevant shipowner under the seafarers’ employment agreement to meet its obligations to them”, the Committee requested the Government to indicate the measures taken to give effect to this requirement of the Convention. The Committee notes the Government’s indication in this regard that, to get an approval for conducting mediation services in employment of seafarers, the mediator is required to submit a request for issuance of an approval and an insurance policy from professional liability for financial losses that the seafarer is subject to as a result of omission in the work of the mediator in the amount of at least €5,000.00 in Serbian dinar counter-value per event. Mediators who obtain the approval are required to submit the extended insurance policies to the Ministry every year. The Government also informs that: (i) article 89, paragraph 7, of the Law on Maritime Navigation prescribes an obligation of a shipowner and/or employer to conclude an insurance or another financial guarantee for the purpose of paying the costs of repatriation of the members of the crew; and (ii) a draft Law amending the Law on Maritime Navigation will be adopted by the end of 2018 to incorporate the 2014 amendments to the Code of the MLC, 2006. The Committee observes that the obligation to provide financial security in conformity with the amendments to the Convention does not affect the obligations under Standard A1.4, paragraph 5(c)(vi). The Committee accordingly requests the Government to indicate the measures taken to give effect to Standard A1.4, paragraph 5(c)(vi), to compensate seafarers for monetary loss in case of failure of the relevant shipowner under the seafarers’ employment agreement to meet its obligations to them.*

<sup>734</sup> See Direct Request (CEACR) - adopted 2019, published 109th ILC session (2020). Maritime Labour Convention, 2006 (MLC, 2006) –Serbia (Ratification: 2011). Regulation 1.4 and the Code. Recruitment and placement services, *supra* note 165:

*The Committee notes that section 15 of the Merchant Shipping (Maritime Labour Convention) (Seafarer Recruitment and Placement Services) Regulations 2014, requires recruitment and placement services to establish “a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarer’s employment agreement to meet its obligations to them”. **The Committee requests the Government to***

In Denmark, certification is only granted to those SRPS that prove, among others, that they can provide financial security for covering seafarer's economic loss as a consequence of the agency's mistakes and negligence as well as that of the shipowner's or employer's regarding the obligations under the SEA. The financial security may either be a bank guarantee or an insurance policy.<sup>735</sup>

Taking into account the above-mentioned, it could be concluded that the issue in respect of the effective implementation of a SRPS system of protection as required under Standard A1.4, paragraph 5(c)(vi) of the MLC is not yet clear. There could be quite different approaches to the implementation of this requirement in different Member States.

Standard A1.4, paragraph 10 of the MLC states:

*Nothing in this Standard shall be understood as diminishing the obligations and responsibilities of shipowners or of a Member with respect to ships that fly its flag.*

Despite the afore-mentioned, if seafarers cannot reach the shipowner, who has failed to fulfil its obligations, they have rights to require compensation from the SRPS on the basis of Standard A1.4, paragraph 5(c)(vi) of the MLC.

This requirement, on the one hand, is an important measure for seafarers to get compensated for the shipowner's failure to meet its obligations, and, on the other hand, imposes disproportionate responsibility on the SRPS provider. Therefore, more clarity and uniformity in respect of its implementation would be necessary.

### ***5.3.3. Exterritorial application of the MLC Standards***

The fact that ships can often be serviced by foreign crews and operate under working conditions and labour standards which cost less to the owners or managers and that such countries often fail to exercise jurisdiction and control, even in respect of provisions which should in theory be applied to those ships, have been of direct concern to the ILO.<sup>736</sup> Therefore, the MLC contains

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***provide detailed information with respect to the system of protection that is required under Section 15 of the Merchant Shipping (Maritime Labour Convention) (Seafarer Recruitment and Placement Services) Regulations 2014, and its conformity with Regulation 1.4 and Standard A1.4, paragraph 5(vi), of the Convention.***

<sup>735</sup> See Direct Request (CEACR) - adopted 2019, published 109th ILC session (2020). Maritime Labour Convention, 2006 (MLC, 2006) – Denmark (Ratification: 2011). CEACR note in respect of Regulation 1.4, paragraph 3 and Standard A1.4, paragraphs 5(b) and (c)(vi). Recruitment and placement, *supra* note 165.

<sup>736</sup> *Supra* note 42, paragraph 13, p. 8.

provisions attempting to facilitate extraterritorial application of the MLC Standards by Member States.

According to *Regulation 1.4. – Recruitment and placement*, paragraph 3 of the MLC<sup>737</sup>, the application of the MLC Standards can also be extended to SRPS operated in countries where the MLC does not apply. According to MLC Standard A1.4, paragraph 9 of the MLC the Member States are required:

*Each Member which has ratified this Convention shall require that shipowners of ships that fly its flag, who use seafarer recruitment and placement services based in countries or territories in which this Convention does not apply, ensure, as far as practicable, that those services meet the requirements of this Standard.*

Also, the above-mentioned standard contains reference to “as far as practicable”, in practice, it could be difficult for the shipowner to ensure that foreign SRPS meet the MLC requirements. One option could be to require shipowners to ask for some guarantee from foreign SRPS stating that the recruitment and placement process is provided in line with the MLC, as it is required by German law. For example, German law states that a shipowner may use a SRPS domiciled in States which have not ratified the MLC for placing seafarers if the SRPS has assured the shipowner, in writing, that it complies with the provisions for recruitment and placement in accordance with Regulation 1.4 of the MLC.<sup>738</sup> For example, under Danish law it can be prohibited to use SRPS in specific countries if the SRPS of the countries concerned do not, in important respects, meet the requirements of the MLC or of ILO Convention No. 179.<sup>739</sup>

The Paris MoU on PSC Concentrated Inspection Campaign (CIC) on the MLC between 01 September and 30 November 2016 has checked the implementation of this requirement in practice.<sup>740</sup> The CIC checklist contained the question *If private recruitment and placement service has been used, does it meet the requirements of the MLC, 2006?*<sup>741</sup> Paragraph 5 in Annex 1.3 *Explanatory notes to the questions* explains that for ships using a private seafarer SRPS based in

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<sup>737</sup> Regulation 1.4. – *Recruitment and placement* paragraph 3, MLC:

*3. Each Member shall require, in respect of seafarers who work on ships that fly its flag, that shipowners who use seafarer recruitment and placement services that are based in countries or territories in which this Convention does not apply, ensure that those services conform to the requirements set out in the Code.*

<sup>738</sup> Section 24 (3), Maritime Labour Act (Germany), *supra* note 363.

<sup>739</sup> *Supra* note 315, Section 8c, Subsection 4.

<sup>740</sup> See Report of the 2016 Concentrated Inspection Campaign (CIC) on Maritime Labour Convention, 2006. Annex 1.3 Explanatory notes to the questions paragraph 5, *supra* note 470.

<sup>741</sup> See Report of the 2016 Concentrated Inspection Campaign (CIC) on Maritime Labour Convention, 2006, p. 7, *supra* note 470.

a State party to the MLC an answer is easy - since private SRPS situated in a State party to the MLC can be operated only in conformity with a standardized system of licensing or certification or other form of regulation it would be an easy task for the master of the ship to clarify the situation. The DMLC Parts I and II may contain information on this matter. For ships using a private seafarer SRPS based in States not party to the MLC, there should be the documentation available to indicate that the shipowner has ensured, as far as practicable, that the service or agency is operated in accordance with the MLC. As evidence to that, for example, information may be collected by the flag State as well as any audits or certifications concerning the quality of services operating in countries that have not ratified the MLC, 2006, utilising checklists against the MLC requirements or an RO audit of a SRPS based in a country that has not ratified the MLC.<sup>742</sup> In only 2.0 per cent of all inspections was the answer in respect of this question ‘No’.<sup>743</sup>

Additionally, to the mentioned Standard A1.4 of the MLC there is Regulation 5.3. – *Labour-supplying responsibilities* stating that each Member State has the responsibility to ensure the implementation of the requirements of the MLC on working and living conditions of seafarers not only on their ships, but also regarding the recruitment and placement of seafarers that are its nationals or are resident or are otherwise domiciled in its territory, to the extent that such responsibility is provided for in the MLC.<sup>744</sup> Regulation 5.3 does not specify how the Member State can act to enforce this Regulation except for the duty to establish an effective inspection and monitoring system for its SRPS. In practice, each Member State can enforce the requirements of the MLC only with respect to the operation and practice of SRPS established in its territory. Although the MLC generally requires responsibility to be taken by every Member State on recruitment and placement of their nationals, in practice, the Member State has jurisdiction and control on recruitment and placement only in its territory. As we know in shipping, there is no limitation for seafarers to be recruited through foreign crewing agencies which is usual practice. No state has jurisdiction over foreign recruitment and placement agencies operating in other countries or over which services are used by its nationals.

The MLC guidelines provide that private SRPS established in the territory of a Member State and providing services for a shipowner located in other country should be required to assume obligations to ensure the proper fulfilment of the shipowner’s responsibilities:

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<sup>742</sup> Report of the 2016 Concentrated Inspection Campaign (CIC) on Maritime Labour Convention, 2006. Annex 1.3 Explanatory notes to the questions, paragraph 5, *supra* note 470.

<sup>743</sup> Report of the 2016 Concentrated Inspection Campaign (CIC) on Maritime Labour Convention, 2006, p. 5, *supra* note 470.

<sup>744</sup> Regulation 5.3, paragraph 1, MLC.

*1. Private seafarer recruitment and placement services established in the Member's territory and securing the services of a seafarer for a shipowner, wherever located, should be required to assume obligations to ensure the proper fulfilment by shipowners of the terms of their employment agreements concluded with seafarers.*<sup>745</sup>

In general, since many seafarers are recruited through foreign crewing agencies or crewing agencies in a Member State for a shipowner located in another country, the possibilities of a Member State to have control over the full recruitment and placement process and also on the future working and living conditions of its nationals, in practice, are limited.

#### **5.4. PSC**

The origins of PSC are to be found in the principles of international law; like the principle of full territorial sovereignty of a coastal state over its internal waters as well as other principles contained in UNCLOS,<sup>746</sup> such principles were later extended by international conventions on safety at sea. The most important IMO conventions include provisions which regulate port State jurisdiction and the extent to which such jurisdiction should be exercised. Internationally, the control of foreign merchant ships by port States has been a feature of the conventions since the International Convention for the Safety of Life at Sea (SOLAS, 1929). Regulations of PSC later were included in other IMO conventions.<sup>747</sup> Under Regulation 19 of Chapter I of SOLAS, 1974, PSC officers have the right to control foreign ships calling at their ports to make sure that they have valid certificates. The port State can act in any of three different ways: on its own initiative, at the request of the flag State or following an outside complaint.<sup>748</sup> PSC has the following instruments: inspection, detailed inspection, detention and ban to enter into port.

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<sup>745</sup> Guideline B5.3 – Labour-supplying responsibilities, paragraph 1, MLC.

<sup>746</sup> R. Churchill and A. Lowe, *supra* note 112, p. 61, 65; J. R. de Larrucea, “*Eficacia de los instrumentos juridicos en la lucha contra la contaminacion marina*”, Collection of Science and Nautical Engineering of Universitat Politècnica de Catalunya, 2008. Available at: <https://upcommons.upc.edu/handle/2117/2272>; Article 2 (1), UNCLOS.

<sup>747</sup> See p. 259 in I. Christodoulou-Varotsi, “*Port state control of labour and social conditions: measures which can be taken by port states in keeping with international*”, *Annuaire de Droit Maritime et Océanique*, University of Nantes, t. XXI. 2003.

<sup>748</sup> Ph. Boisson, *supra* note 112, p. 454.

In 1981, the IMO Assembly adopted Resolution A.466 (XII) on procedures for the control of ships<sup>749</sup> and since then a variety of resolutions relating to PSC have become effective.<sup>750</sup>

Although PSC regulation was in place, it did not cover social and labour issues; since, IMO conventions do not include social and labour control within their scope. According to Christodoulou-Varotsi, the issue of compliance to social and labour requirements through PSC was not dealt with before the adoption of ILO Convention No. 147,<sup>751</sup> which entered into force 28 November 1981. Convention No. 147 calls for inspections where social and labour conditions of seafarers are taken into consideration.<sup>752</sup> Convention No. 147 in its Appendix refers to 15 other ILO conventions<sup>753</sup> which are either specific to seafarers or are otherwise applicable and for which “substantially equivalent” national provisions must be ensured by ratifying States.<sup>754</sup> Convention

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<sup>749</sup> *Procedures for the control of ships*, adopted 19 November 1981, IMO Resolution A.466 (XII). Available at: [http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Assembly/Documents/A.466\(12\).pdf](http://www.imo.org/en/KnowledgeCentre/IndexofIMOResolutions/Assembly/Documents/A.466(12).pdf) Last visited in March 2020.

<sup>750</sup> P. Ehlers, R. Lagoni, (eds.), *International Maritime Organizations and their Contribution towards a Sustainable Maritime Development*, Hamburg, Lit Verlag, 2006, p. 120.

<sup>751</sup> I. Christodoulou-Varotsi, *supra* note 747.

<sup>752</sup> Article 2, paragraph (f), Convention No. 147, *supra* note 172;  
*Each Member which ratifies this Convention undertakes—*  
*(...) (f) to verify by inspection or other appropriate means that ships registered in its territory comply with applicable international labour Conventions in force which it has ratified, with the laws and regulations required by subparagraph (a) of this Article and, as may be appropriate under national law, with applicable collective agreements;*

<sup>753</sup> Appendix, Convention No. 147, *supra* note 172:  
Minimum Age Convention, 1973 (No. 138), or  
Minimum Age (Sea) Convention (Revised), 1936 (No. 58), or  
Minimum Age (Sea) Convention, 1920 (No. 7);  
Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55), or  
Sickness Insurance (Sea) Convention, 1936 (No. 56), or  
Medical Care and Sickness Benefits Convention, 1969 (No. 130);  
Medical Examination (Seafarers) Convention, 1946 (No. 73);  
Prevention of Accidents (Seafarers) Convention, 1970 (No. 134)(Articles 4 and 7);  
Accommodation of Crews Convention (Revised), 1949 (No. 92);  
Food and Catering (Ships' Crews) Convention, 1946 (No. 68) (Article 5);  
Officers' Competency Certificates Convention, 1936 (No. 53) (Articles 3 and 4) ;  
(Note: In cases where the established licensing system or certification structure of a State would be prejudiced by problems arising from strict adherence to the relevant standards of the Officers' Competency Certificates Convention, 1936, the principle of substantial equivalence shall be applied so that there will be no conflict with that State's established arrangements for certification.)  
Seamen's Articles of Agreement Convention, 1926 (No. 22);  
Repatriation of Seamen Convention, 1926 (No. 23);  
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87);  
Right to Organise and Collective Bargaining Convention, 1949 (No. 98).

<sup>754</sup> Article 2, paragraph (a), Convention No. 147, *supra* note 172;  
*Each Member which ratifies this Convention undertakes—*  
*(a) to have laws or regulations laying down, for ships registered in its territory--*  
*(i) safety standards, including standards of competency, hours of work and manning, so as to ensure the safety of life on board ship;*

No. 147 has been supplemented by the Protocol of 1996,<sup>755</sup> extending the list of Conventions appearing in the Appendix to the original principal Convention No. 147 by the two other conventions.<sup>756</sup> It should be mentioned that Convention No. 147 is still in force in 14 States, including the United States, Brazil and the Ukraine,<sup>757</sup> which have not yet ratified the MLC. Accordingly, there are two regimes in place today in respect of maritime labour standards – one based on Convention No. 147 and the other – on the MLC.

In 2003, Christodoulou-Varotsi wrote that, despite the fact that ILO Convention No. 147 was included as a relevant instrument in the Paris MoU, the model inspection report annexed to the Paris MoU was incomplete and contained no information on the application of ILO Convention No. 147. With a few exceptions, statistics on observed infringements did not indicate the existence of any real control as concerns shipboard living conditions.<sup>758</sup> This could be explained by the fact that about 30 ILO maritime labour Conventions, one Protocol and 23 Recommendations, constituting a fragmented approach, have been adopted over a period of 80 years in response to specific problems or needs which probably do not represent a manageable set of standards by States. For PSC of social and labour conditions to be fully implemented by port States, there is a need for a clear legal regime defining the obligations of port States.<sup>759</sup>

Also, Chen has stated that between 1998 and 2009, the deficiencies detected regarding working and living conditions on board accounted for less than 10 – 15 per cent of the total deficiencies detected under the Paris MoU PSC inspection; while, not a single vessel was detained on the breach of labour standards. Chen comes to the conclusion that it should be reasonable to argue that even developed regional PSC has relatively ignored maritime labour matters. He admits

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*(ii) appropriate social security measures; and*  
*(iii) shipboard conditions of employment and shipboard living arrangements, in so far as these, in the opinion of the Member, are not covered by collective agreements or laid down by competent courts in a manner equally binding on the shipowners and seafarers concerned;*

*and to satisfy itself that the provisions of such laws and regulations are substantially equivalent to the Conventions or Articles of Conventions referred to in the Appendix to this Convention, in so far as the Member is not otherwise bound to give effect to the Conventions in question;*

<sup>755</sup> Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976, (P 147), adopted 8 October 1996.

<sup>756</sup> *Ibid.*, Supplementary Appendix, Part A; Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133) and Convention No. 180, *supra* note 163.

<sup>757</sup> See status of Convention No. 147 at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300\\_INSTRUMENT\\_ID:312292](https://www.ilo.org/dyn/normlex/en/f?p=1000:11300:0::NO:11300:P11300_INSTRUMENT_ID:312292) Last visited in March 2020.

<sup>758</sup> I. Christodoulou-Varotsi, *supra* note 747, p. 271.

<sup>759</sup> *Ibid.*

that the enforcement of the MLC since 2013 may change this situation; however, greater observations and data are needed.<sup>760</sup>

The MLC expressly incorporates MLC Standards under the PSC control regime.<sup>761</sup>

According to Lillie, the role of PSC, and the obligation of flag States to withdraw Certificates from ships not in compliance with the Convention, were the most fundamental points of disagreement during the PTMC at the ILO, Geneva, 13-24 September 2004:

*When it became apparent during the PTMC that the shipowners and a number of governments were unwilling to approve language allowing PSC inspection and detention of a ship on labour rights grounds, the entire seafarers' group walked out of the meeting. (...) In the April 2005 meeting, the seafarers' group made it clear that weak enforcement provisions would be a deal-breaker. Unions regarded PSC and ship detention as the real back-stop to all other enforcement provisions, without which, in their view, the rest of the convention would be meaningless. While some shipowner representatives and governments maintained that, in their view, the MLC should only consolidate existing conventions, and not go beyond them, the seafarers' group made it clear that it would not support an MLC that failed to go beyond existing conventions and precedents in terms of enforcement and compliance. Its goal, and its price for supporting a level playing field for shipowners, was to move beyond existing precedents for labour rights enforcement.<sup>762</sup>*

The codification of weak standards without enforcement would give union approval to the flag of convenience system without unions receiving the main thing that they wanted in return: namely, a viable enforcement regime.<sup>763</sup> PSC, according to the MLC, is the new solution for seafarers who have not been paid or who experience the breach of other rights. Unpaid wages are the deficiency leading to a ship detention.

The current version of IMO procedures for PSC also addresses PSC in respect of the MLC. Paragraph 1.2.6 of IMO Resolution A.1119(30) *Procedures for Port State Control*,<sup>764</sup> as of 20 December 2017 states that if a port State exercises control based on the MLC, as amended, guidance on the conduct of such inspections is given in the ILO publication “Guidelines for port

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<sup>760</sup> G. Chen, D. Shan, *supra* note 38, p. 1-8.

<sup>761</sup> J. Rodrigo de Larrucea, “*Seguridad marítima. Teoría general del riesgo.*”, Barcelona, Marge Books, 2015.

<sup>762</sup> N. Lillie, *supra* note 546, p. 210.

<sup>763</sup> N. Lillie, *supra* note 546, p. 213.

<sup>764</sup> Procedures for Port State Control, IMO Resolution A.1119(30). Available at: [http://www.classnk.or.jp/hp/pdf/activities/statutory/ism/imo/imo\\_a1119-30.pdf](http://www.classnk.or.jp/hp/pdf/activities/statutory/ism/imo/imo_a1119-30.pdf) Last visited in March 2020.

State control officers carrying out inspections under the Maritime Labour Convention, 2006”.<sup>765</sup> Appendix 12 *List of certificates and documents* of IMO Resolution A.1119(30) lists the following documents to be inspected in respect of the MLC:

- (...) 58. *Records of hours of rest and table of shipboard working arrangements (STCW Code section A-VIII/1.5 and 1.7, ILO Convention No.180 art. 5.7, art. 8.1 and MLC, 2006 Standard A.2.3.10 and A.2.3.12);(...)*  
*For reference*  
(...) 5. *Medical certificates (ILO Convention No.73 or MLC, 2006 Standard A1.2);*  
6. *Records of hours of work or rest of seafarers (ILO Convention No.180 part II art. 8.1 or MLC, 2006, Standard A.2.3.12);*  
7. *Maritime Labour Certificate (MLC, 2006, Regulation 5.1.3);*  
8. *Declaration of Maritime Labour compliance (DMLC) on board (parts I and II) (MLC, 2006, Regulation 5.1.3);*  
9. *Seafarer's employment agreements (MLC, 2006, Standard A 2.1);*  
10. *Certificate of Insurance or Financial Security for Repatriation of Seafarers (MLC, 2006, Regulation 2.5); and*  
11. *Certificate of Insurance or Financial Security for Shipowners liability (MLC, 2006, Regulation 4.2).*

PSC is structured into two levels: the international level and the regional level.<sup>766</sup> It can be exercised unilaterally, by a single State which is party to the Conventions, or on a multilateral basis, by means of agreements concluded within a regional framework.<sup>767</sup> However, the coordinated application of PSC is a relatively recent development.<sup>768</sup>

The waters of the European coastal States and the North Atlantic basin from North America to Europe are covered by a Memorandum of Understanding, signed in Paris on 28 January 1982 (Paris MoU),<sup>769</sup> building up the first regional framework to exercise their enforcement jurisdiction over maritime labour conditions on board foreign ships. As the PSC inspection rules regarding maritime labour conditions have mostly been developed by the ILO, from then on the ILO has obtained some hard ‘teeth’ for the global fulfilment of its labour standards in the maritime industry

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<sup>765</sup> ILO Guidelines for port State control officers carrying out inspections under the Maritime Labour Convention, 2006 were adopted by the ILO in September 2008. Available at: [https://www.ilo.org/global/standards/maritime-labour-convention/WCMS\\_101787/lang--en/index.htm](https://www.ilo.org/global/standards/maritime-labour-convention/WCMS_101787/lang--en/index.htm) Last visited in March 2020.

<sup>766</sup> I. Christodoulou-Varotsi, *supra* note 747, p. 259.

<sup>767</sup> Ph. Boisson, *supra* note 112, p. 457.

<sup>768</sup> Z. O. Ozcayir, *supra* note 33, p. 115.

<sup>769</sup> See <https://www.parismou.org> Last visited in March 2020.

compared to its previous maritime labour conventions.<sup>770</sup> The Paris MoU is not an international convention but an administrative agreement. It does not introduce new international standards but establishes a cooperation system between members on the enforcement of these standards. The Paris MoU has been amended several times to accommodate new international requirements arising from the IMO, EU and other developments. Its latest version from 21 December 2019 also incorporates PSC in respect of the MLC.<sup>771</sup> In accordance with Section 3.7. of the Paris MoU: in the case of a detention related to a non-compliance with the MLC, the Authority will also immediately notify the appropriate shipowners' and seafarers' organizations in the port State in which the inspection was carried out. Inspections of social and labour conditions are dealt with in Annex 2 of the Paris MoU. Under Section 1.1 of Annex 2 of the Paris MoU:

*Inspection regarding certificates of competency is dealt with in a PSCC Instruction. In the exercise of control of the MLC, 2006, the Port State Control Officer (PSCO) will decide, on the basis of the clear grounds listed in Annex 9 and his/her professional judgement, whether the ship will receive a more detailed inspection. All complaints not manifestly unfounded regarding conditions on board will be investigated thoroughly and action taken as deemed necessary. The PSCO will also use his/her professional judgement to determine whether the conditions on board give rise to a hazard to the safety or health of the seafarers which necessitates the rectification of conditions and may, if necessary, detain the ship until appropriate corrective action is taken. Reporting procedures for detentions are provided in Annex 4.*

*Implementation of PSC procedures which are specific to MLC, 2006, is set out in a PSCC Instruction.*

Annex 10 of the Paris MoU, in the certificates and documents to be examined, lists the MLC Certificate, the DMLC Parts I and II and other documents required by the MLC.<sup>772</sup>

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<sup>770</sup> G. Chen, D. Shan, *supra* note 38.

<sup>771</sup> Section 2.1, paragraph 12, Paris Memorandum of understanding on port state control (See 42<sup>nd</sup> Amendment Paris MoU (English) - Effective 21 December 2019). Available at: <https://www.parismou.org/inspections-risk/library-faq/memorandum> Last visited in March 2020.

<sup>772</sup> Annex 10 *Examination of certificates and documents* of the Paris MoU, *supra* note 771, paragraph 70:  
.70 Maritime Labour Certificate and Declaration of Maritime Labour Compliance part I and II (MLC and DMLC part I and II) (MLC, 2006/Reg.5.1/ standard A5.1.3);  
.71 Medical certificates (MLC, 2006/ Reg. 1.2/Standard A1.2 or ILO73);  
.72 Table of shipboard working arrangements (MLC, 2006/ Reg.2.3/ standard A2.3, 10 or ILO180/Part II/Art 5.7 a & b and STCW95/A-VIII/1.5);  
.73 Records of hours of work or rest of seafarers (MLC, 2006/Reg. 2.3/standard A2.3, 12 or ILO180/Part II/Art 8.1 and STCW95/A-VIII/1.5);  
.74 Certificate or documentary evidence of financial security for repatriation (MLC, 2006/Reg2.5/standard A2.5.2);  
.75 Certificate or documentary evidence of financial security relating to shipowners liability (MLC, 2006/Reg.4.2/standard A4.2.1);

In addition, an information system called *Equasis* was introduced in 2000 by the European Commission and several maritime authorities, aiming to increase transparency of information relating to the quality of ships and their operators.

Application of regional port State agreements are also authorised by Regulation 5.2.1, paragraph 3 of the MLC stating that inspections in a port shall be carried out by authorized officers in accordance with the provisions of the Code and other applicable international arrangements governing PSC inspections in the Member State.

#### **5.4.1. MLC standards on PSC**

Responsibilities of every Member State in respect of foreign ships calling in the port of a Member are prescribed by *Regulation 5.2. – Flag State responsibilities* under *Title 5: Compliance and enforcement* of the MLC. Every foreign ship calling in the port of a Member State is subject to inspection and control of the port State.<sup>773</sup> The PSC inspection process starts with a review of the MLC Certificate and the DMLC. Usually, the inspection in a foreign port will be limited to that of the MLC certificate and DMLC.<sup>774</sup> But shipping practice shows that valid Certificates do not always guarantee compliance with the Conventions. Therefore, in the absence of valid Certificates or documents,<sup>775</sup> or if there are clear grounds for believing that the conditions of the ship or its equipment or its crew do not substantially meet the requirements of the relevant instrument, a more detailed inspection will be carried out on the ship. Reasons for a more detailed inspection in respect of the MLC Standards are:

*(a) the required documents are not produced or maintained or are falsely maintained or that the documents produced do not contain the information required by this Convention or are otherwise invalid; or*

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<sup>773</sup> Regulation 5.2.1, paragraph 1, MLC.

<sup>774</sup> Regulation 5.2.1, paragraph 2, MLC.

<sup>775</sup> Annex 10 *Examination of certificates and documents*, *supra* note 771, Paris MoU:

*At the initial inspection the Port State Control Officer will, as a minimum and to the extent applicable, examine the following documents:*

*.70 Maritime Labour Certificate and Declaration of Maritime Labour Compliance part I and II (MLC and DMLC part I and II) (MLC, 2006/Reg.5.1/ standard A5.1.3);*

*.71 Medical certificates (MLC, 2006/ Reg. 1.2/Standard A1.2 or ILO73);*

*.72 Table of shipboard working arrangements (MLC, 2006/ Reg.2.3/ standard A2.3, 10 or ILO180/Part II/Art 5.7 a & b and STCW95/A-VIII/1.5);*

*.73 Records of hours of work or rest of seafarers (MLC, 2006/Reg. 2.3/standard A2.3, 10 or ILO180/Part II/Art 8.1 and STCW95/A-VIII/1.5);*

*.74 Certificate or documentary evidence of financial security for repatriation (MLC, 2006/Reg2.5/standard A2.5.2);*

*.75 Certificate or documentary evidence of financial security relating to shipowners liability (MLC, 2006/Reg.4.2/standard A4.2.1);*

- (b) there are clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of this Convention; or*
- (c) there are reasonable grounds to believe that the ship has changed flag for the purpose of avoiding compliance with this Convention; or*
- (d) there is a complaint alleging that specific working and living conditions on the ship do not conform to the requirements of this Convention;*<sup>776</sup>

Additional to the afore-mentioned situations, Standard A5.2.1, paragraph 1 of the MLC states that such inspections shall, in any case be carried out where the working and living conditions believed or alleged to be defective could constitute a clear hazard to the safety, health or security of seafarers; or where the authorized officer has grounds to believe that any deficiencies constitute a serious breach of the requirements of this Convention (including seafarers' rights).

In the case of a more detailed inspection, PSC primarily examines 14 areas listed in Appendix A5-III of the MLC.<sup>777</sup> The SEA is one of these areas. Except in the case of a complaint, stated in paragraph 1(d) of Standard A5.2.1 of the MLC, the inspection shall generally be limited to matters within the scope of the complaint; although, a complaint, or its investigation, may provide clear grounds for a detailed inspection.<sup>778</sup>

Following a more detailed inspection, an officer of the port State shall ask the master to rectify them.<sup>779</sup> The Port State Officer shall then take steps to ensure that the ship shall not proceed to sea until: such non-conformities as the conditions on board being clearly hazardous to the safety,

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<sup>776</sup> Standard A5.2.1, paragraph 1, MLC.

<sup>777</sup> Appendix A5-III of the MLC:

*General areas that are subject to a detailed inspection by an authorized officer in a port of a Member carrying out a port State inspection pursuant to Standard A5.2.1:*

*Minimum age*

*Medical certification*

*Qualifications of seafarers*

*Seafarers' employment agreements*

*Use of any licensed or certified or regulated private recruitment and placement service*

*Hours of work or rest*

*Manning levels for the ship*

*Accommodation*

*On-board recreational facilities*

*Food and catering*

*Health and safety and accident prevention*

*On-board medical care*

*On-board complaint procedures*

*Payment of wages*

*Financial security for repatriation*

*Financial security relating to shipowners' liability.*

<sup>778</sup> Standard A5.2.1, paragraph 3, MLC.

<sup>779</sup> Standard A5.2.1, paragraph 4, MLC.

health or security of seafarers; or the non-conformities which constitute a serious or repeated breach of the requirements of this Convention (including seafarers' rights), have been rectified; or until the Port State Officer has accepted a plan of action to rectify these non-conformities and is satisfied that the plan will be implemented in an expeditious manner.<sup>780</sup> Of course, undue detention or delay of a ship should be avoided in this case.<sup>781</sup>

Under Regulation 5.2. of the MLC, important attention is given to seafarers' complaints. Paragraph 1(d) of Standard A5.2.1 defines "complaint" as follows:

*For the purpose of paragraph 1(d) of this Standard, "complaint" means information submitted by a seafarer, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the ship, including an interest in safety or health hazards to seafarers on board.*

Under Regulation 5.2.2. – *Onshore seafarer complaint – handling procedures*, paragraph 1 of the MLC, each Member shall ensure that seafarers on ships calling in a port in the Member's territory who alleges a breach of the requirements of the MLC have the right to report such a complaint in order to facilitate a prompt and practical means of redress. The confidentiality of complaints made by seafarers should be respected.<sup>782</sup>

A complaint by a seafarer may be reported to an authorized officer in the port at which the seafarer's ship has called. In such cases, the authorized officer shall undertake an initial investigation.<sup>783</sup> In the event that the investigation reveals a non-conformity that falls within the scope of paragraph 6 of Standard A5.2.1<sup>784</sup> of the MLC, the provisions of that paragraph shall be

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<sup>780</sup> Standard A5.2.1, paragraph 6; Regulation 5.2.2, paragraph 4 and 5, MLC.

<sup>781</sup> Standard A5.2.1, paragraph 6; Regulation 5.2.2, paragraph 4 and 5, MLC.

<sup>782</sup> Standard A5.2.2, paragraph 7, MLC.

<sup>783</sup> Standard A5.2.2, paragraph 1, MLC.

<sup>784</sup> Standard A5.2.1, paragraph 6, MLC:

*6. Where, following a more detailed inspection by an authorized officer, the ship is found not to conform to the requirements of this Convention and:*

*(a) the conditions on board are clearly hazardous to the safety, health or security of seafarers; or*

*(b) the non-conformity constitutes a serious or repeated breach of the requirements of this Convention (including seafarers' rights);*

*the authorized officer shall take steps to ensure that the ship shall not proceed to sea until any non-conformities that fall within the scope of subparagraph (a) or (b) of this paragraph have been rectified, or until the authorized officer has accepted a plan of action to rectify such non-conformities and is satisfied that the plan will be implemented in an expeditious manner. If the ship is prevented from sailing, the authorized officer shall forthwith notify the flag State accordingly and invite a representative of the flag State to be present, if possible, requesting the flag State to reply within a prescribed deadline. The authorized officer shall also inform forthwith the appropriate shipowners' and seafarers' organizations in the port State in which the inspection was carried out.*

applied, i.e., the ship can be detained until non-conformities are rectified or the action plan is approved by PSC.

According to Standard A2.5 – *Repatriation*, paragraph 5 (a) of the MLC, a port State also has responsibility for seafarers' repatriation if the shipowner or flag State fails to do that. In such a case, a port State can recover costs from the State whose flag the ship flies. Additionally, Guideline B2.5.2 – *Implementation by Members*, paragraph 1 of the MLC states:

*1. Every possible practical assistance should be given to a seafarer stranded in a foreign port pending repatriation and in the event of delay in the repatriation of the seafarer, the competent authority in the foreign port should ensure that the consular or local representative of the flag State and the seafarer's State of nationality or State of residence, as appropriate, is informed immediately.*

#### **5.4.2. Analysis of PSC reports on seafarers' matters**

There are nine regional PSC regimes based on agreements – the Memorandums of Understanding (MoU) – signed by: Europe and the North Atlantic (Paris MoU); Asia and the Pacific (Tokyo MoU); Latin America (Acuerdo de Viña del Mar); the Caribbean (Caribbean MoU); West and Central Africa (Abuja MoU); the Black Sea region (Black Sea MoU); the Mediterranean (Mediterranean MoU); the Indian Ocean (Indian Ocean MoU); and the Riyadh MoU. The United States Coast Guard maintains the tenth PSC regime.<sup>785</sup> Reports by the following MoU were analysed below: the Paris MoU, Tokyo MoU, the Caribbean MoU, Abuja MoU, the Black Sea MoU, Indian Ocean MoU, Riyadh MoU as well as the United States Coast Guard. Information and reports of the Latin American MoU and Mediterranean MoU and the Report of 2018 from the Riyadh MoU were not available electronically.

For the analysis, the data from the Annual Reports of 2017 and 2018 publicly available through websites of PSC regimes have been used. Focus is on the MLC-related deficiencies and detentions. The deficiencies related to Convention No. 147 are also taken into account; since, some PSC reports combine data on these two Conventions. As well, any comments and explanations in respect of the MLC-related deficiencies and detentions are considered.

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<sup>785</sup> See <http://www.imo.org/en/OurWork/MSAS/Pages/PortStateControl.aspx>

According to the data of **the Paris MoU** in 2017: there were 17,916 inspections performed; 40,742 deficiencies and 3,706 detainable deficiencies registered<sup>786</sup>; and the number of detentions was 685.<sup>787</sup>

From the Table *Major categories of deficiencies in 2015-2017*, it follows that in 2017 the number of deficiencies in respect of working and living conditions (Convention No. 147 and the MLC) were 6,348 (15.5 per cent of the total).<sup>788</sup> The Table *Top 5 categories of deficiencies 2017* lists “Labour conditions-Health protection, medical care, social security” as the third group of deficiencies with 3,401 deficiencies (8.35 per cent of the total).<sup>789</sup>

The Paris MoU, in 2017, presented more detailed insight into MLC related deficiencies. Deficiencies mostly in working and living conditions have been found in the following areas:

*Health and safety and accident prevention (area 11) 3,230 (39.9% of all MLC deficiencies); food and catering (area 10) 1,295 (16.3%); hours of work and rest (area 6) 752 (9.5%); accommodation (area 8) 708 (8.9%) and seafarer’s employment agreements (area 4) 646 (7.8%) deficiencies.*<sup>790</sup>

Deficiencies in respect of SEA’s are listed as the first in the MLC deficiencies top 5. In the MLC detainable deficiencies top 5, deficiencies in respect of wages are listed first and second are listed deficiencies in respect of SEA’s.<sup>791</sup>

According to the data from the Paris MoU in 2018, there were 17,952 inspections performed; 40,368 deficiencies; 3,171 detainable deficiencies registered; and the number of detentions were 566.<sup>792</sup>

From the Table *Major categories of deficiencies in 2016-2018*, it follows that the number of deficiencies in respect of working and living conditions (Convention No. 147 and MLC) were 6,769 (15 per cent of the total).<sup>793</sup> The Table *Top 5 Categories of deficiencies 2018* lists “Labour

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<sup>786</sup> Annual Report “Safeguarding responsible and sustainable shipping”, 2017, Paris MoU, p. 22. Available at: <https://www.parismou.org/publications-category/annual-reports> Last visited in March 2020.

<sup>787</sup> *Ibid*, p. 28.

<sup>788</sup> 2017 Paris MoU Annual Report, *supra* note 786, p. 50.

<sup>789</sup> 2017 Paris MoU Annual Report, *supra* note 786, p. 51.

<sup>790</sup> 2017 Paris MoU Annual Report, *supra* note 786, p. 25.

<sup>791</sup> 2017 Paris MoU Annual Report, *supra* note 786, p. 52.

<sup>792</sup> 2018 Paris MoU Annual report “Consistent Compliance”, p. 15. Available at: <https://www.parismou.org/publications-category/annual-reports> Last visited in March 2020.

<sup>793</sup> 2018 Paris MoU Annual report, *supra* note 792, p. 42.

conditions-Health protection, medical care, social security” as fourth group of deficiencies with 3,411 deficiencies (8.29 per cent of the total).<sup>794</sup>

The percentage of deficiencies regarding working and living conditions, related to the total deficiencies in 2018, is 14.9 per cent (in 2017 – 15.5 per cent; in 2016 – 16.1 per cent).<sup>795</sup> In accordance with the 2018 Paris MoU Annual Report “Consistent Compliance”, deficiencies in working and living conditions (MLC) have been found in the following areas:

- Health and safety, and accident prevention – 3,090 (41.8 per cent of all MLC deficiencies)
- Food and catering – 1,260 (17.1 per cent)
- Hours of work and rest – 628 (8.5 per cent)
- Accommodation – 639 (8.6 per cent)
- Seafarers employment agreements – 554 (7.5 per cent).<sup>796</sup>

As in the Annual Report of 2017 in the Annual Report of 2018, deficiencies in respect of SEA’s are listed first in the MLC deficiencies top 5 and in the MLC detainable deficiencies’ top 5, the deficiencies in respect of wages are listed first and listed second are the deficiencies in respect of SEA’s.<sup>797</sup>

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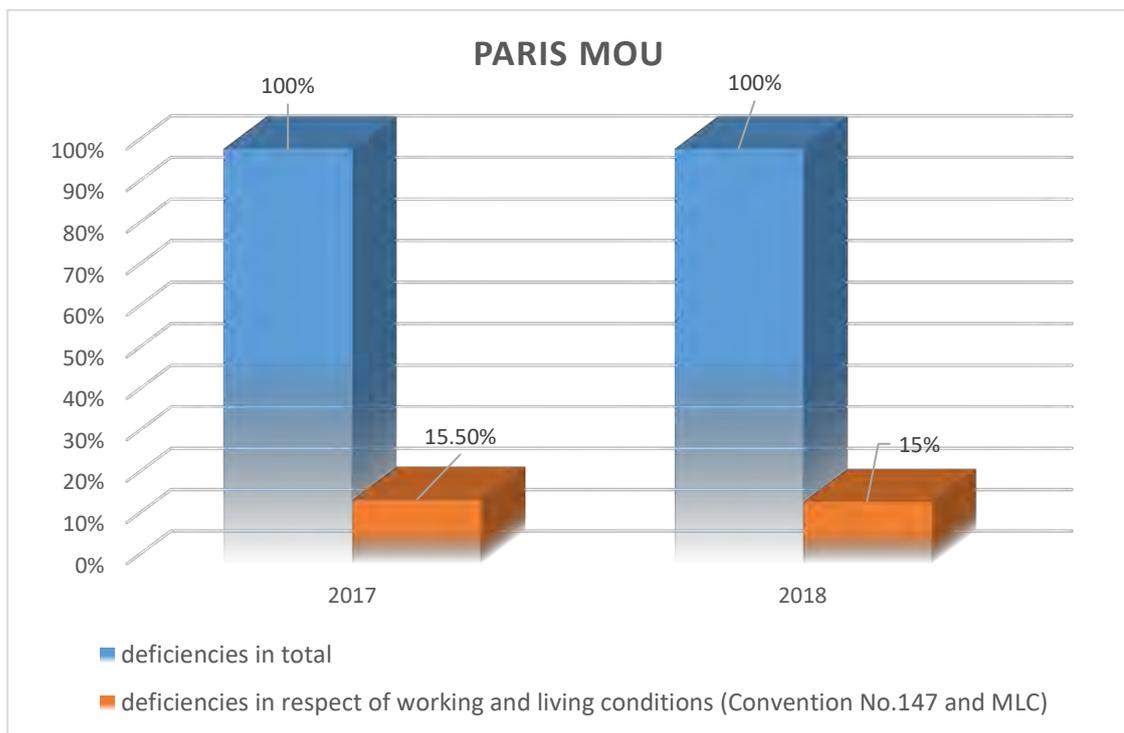
<sup>794</sup> 2018 Paris MoU Annual report, *supra* note 792, p. 43.

<sup>795</sup> 2018 Paris MoU Annual report, *supra* note 792, p. 16.

<sup>796</sup> 2018 Paris MoU Annual report, *supra* note 792, p. 16.

<sup>797</sup> 2018 Paris MoU Annual report, *supra* note 792, p. 44.

**Graphic 4. Paris MoU. Deficiencies 2017 – 2018.**



For comparison, the results of inspections by the Paris MoU in respect of the MLC's first month can be mentioned. During the first month, seven ships were detained for MLC-related deficiencies. This means that 10 per cent of the total number of detentions (68) in the Paris MoU area in this period was MLC, 2006-related.<sup>798</sup> Other interesting figures during the first month of MLC enforcement provided by the Paris MoU are:

- A total of 4,260 deficiencies have been recorded;
- 494 deficiencies out of the 4,260 recorded (11.5 per cent) were related to any of the ILO Conventions listed as relevant instrument;
- Of these 494, 30 (6,1 per cent) were considered to be serious enough to be a ground for detention;
- 23 of those 30 (76,7 per cent) were related to breaches of the MLC and resulted in the detention of 7 individual ships;
- The total number of detentions was 68 during 1,532 inspections, which resulted in a detention rate of 4,4 per cent.<sup>799</sup>

<sup>798</sup> See <https://www.parismou.org/results-first-month-maritime-labour-convention-7-ships-detained-mlc-related-deficiencies> Last visited in March 2020.

<sup>799</sup> See <https://www.parismou.org/results-first-month-maritime-labour-convention-7-ships-detained-mlc-related-deficiencies> Last visited in March 2020.

**The Tokyo MoU** is one of the most active regional PSC organizations in the world, consisting of 20 member Authorities in the Asia-Pacific region.<sup>800</sup> The 2017 Annual Report from the Tokyo MoU mentions that deficiencies relating to labour conditions/MLC, since its entry into force, have increased year-on-year, which is considered the positive consequence of wider ratification of the MLC by the member Authorities (i.e., 6 or 30 per cent of member Authorities were Parties to the MLC when entry into force occurred in 2013; 15 or 75 per cent by the end of 2017.<sup>801</sup> It follows that in 2017, the Tokyo MoU on PSC recorded 77,453 deficiencies in total (grand total), of which 7,233 (9,34 per cent) are in relation to working and living and labour conditions.<sup>802</sup> There were 941 detentions in total in 2017.<sup>803</sup>

According to the Annual Report 2018 by the Tokyo MoU, in 2018 there were 934 detentions in total (There is no information on how many were related to working and living conditions.) and a total of 73,441 deficiencies were recorded in 2018,<sup>804</sup> of which 6,794 (9,25 per cent) were related to working, living and labour conditions (see statistics below). MLC-related deficiencies were not listed among the most frequent detainable deficiencies or mentioned as a main category of deficiencies, according to the Annual Report 2018.<sup>805</sup>

The MLC and Convention No. 147 are the basis of inspections of working and living conditions under the Tokyo MoU.

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<sup>800</sup> See <http://www.tokyo-mou.org/> Last visited in March 2020.

<sup>801</sup> Annual Report on Port State Control in the Asia-Pacific Region 2017, Tokyo MoU, p. 13. Available at: [http://www.tokyo-mou.org/publications/annual\\_report.php](http://www.tokyo-mou.org/publications/annual_report.php) Last visited in March 2020.

<sup>802</sup> Tokyo MoU, The Annual Report, *supra* note 801, p. 32.

<sup>803</sup> Tokyo MoU, The Annual Report, *supra* note 801, p. 23.

<sup>804</sup> Annual Report on Port State Control in the Asia-Pacific Region 2018, Tokyo MoU, p. 11., 12. Available at: [http://www.tokyo-mou.org/publications/annual\\_report.php](http://www.tokyo-mou.org/publications/annual_report.php) Last visited in March 2020.

<sup>805</sup> See Figure 7: *Deficiencies by main categories* and Figure 8: *Most frequent detainable deficiencies*, Tokyo MoU, Annual Report, *supra* note 804, p. 18.

**Graphic 5. Tokyo MoU. Deficiencies 2017 – 2018.**

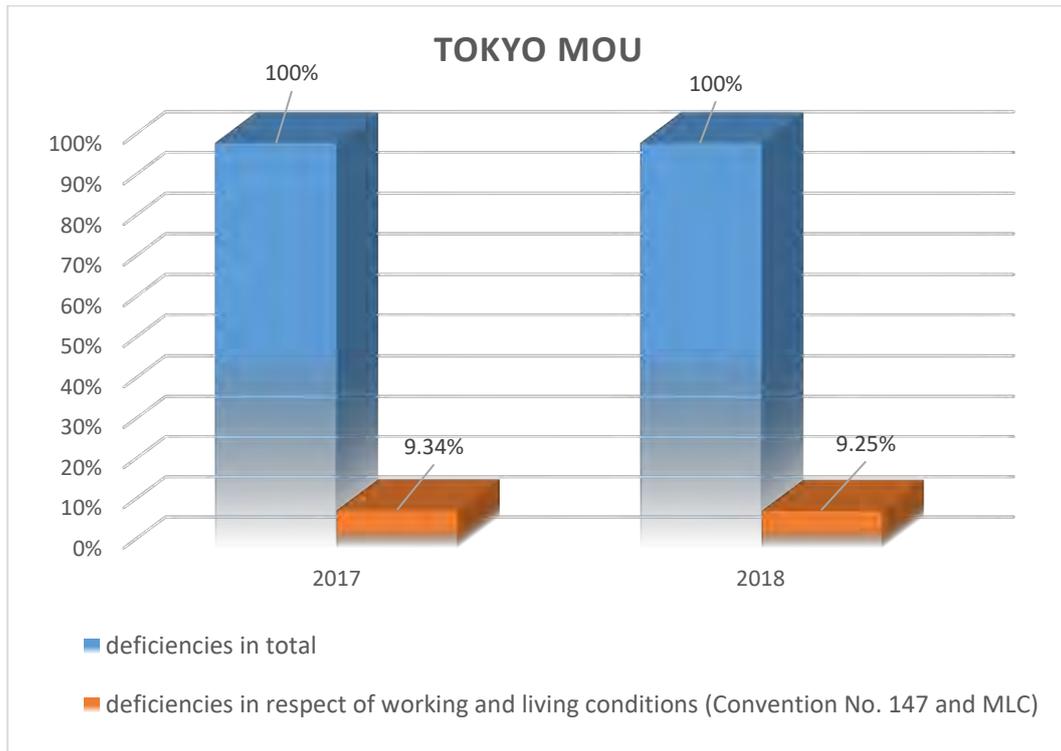


Table 7 *Deficiencies by categories* of Annual Report 2018 lists deficiencies related to working conditions – 2, 126 of total, living conditions – 410, and in respect of labour conditions – 4258.<sup>806</sup> Deficiencies in respect of labour conditions are divided into such categories as the following:<sup>807</sup>

- Minimum requirements for seafarers – 48
- Conditions of employment – 545
- Accommodation, recreational facilities, food and catering – 1, 094
- Health protection, medical care, social security – 2, 571.

**The Indian Ocean MoU** in its Annual Report 2017 presented the following numbers on deficiencies in respect of working and living conditions (1,883 in total):

- Living conditions - 143 deficiencies (1.09 per cent)
- Working conditions – 661 (5.05 per cent)

<sup>806</sup> See Table 7: *Deficiencies by categories*, p. 33; Table 14: *Comparison of deficiencies by categories*, p. 50., Tokyo MoU, Annual Report, *supra* note 804.

<sup>807</sup> See Table 7: *Deficiencies by categories*, p. 33; Table 14: *Comparison of deficiencies by categories*, p. 50., Tokyo MoU, Annual Report, *supra* note 804.

- Labour conditions – conditions of employment -166 (1.27 per cent)
- Accommodation recreational facilities F and C – 296 (2.26 per cent)
- Health protection, medical care, social security – 617 (4.71 per cent).<sup>808</sup>

There were 13,099 deficiencies recorded in total in 2017.<sup>809</sup>

A total of 5,697 inspections were carried out in 2018 by the Indian Ocean MoU. Out of these 5,697 inspections: 2,856 inspections had deficiencies and the total number of deficiencies were 11,847. Serious deficiencies noted by PSC officers led to the detention of 252 ships.<sup>810</sup>

Annual Report 2018 presents the following numbers on deficiencies in respect of working and living conditions (in total: 1,875):

- Living conditions – 195 (1.65 per cent)
- Working conditions – 895 (7.55 per cent)
- Labour Conditions – conditions of employment – 157 (1.33 per cent)
- Accommodation and recreational facilities F and C – 228 (1.92 per cent)
- Health protection, medical care, social security – 400 (3.38 per cent).<sup>811</sup>

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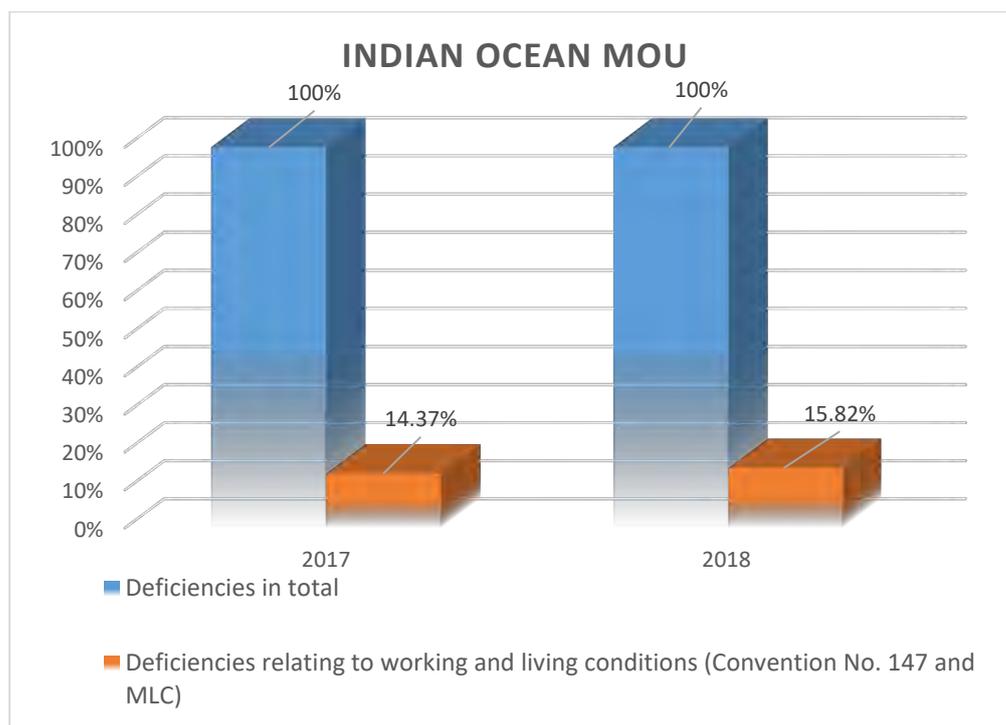
<sup>808</sup> Annual report 2017, Indian MoU, Table 3 *Deficiencies by categories*, p. 21. Available at: <http://www.iomou.org/armain.htm> Last visited in March 2020.

<sup>809</sup> *Ibid*, p. 16.

<sup>810</sup> Indian MoU, Annual report 2018, *supra* note 808, p. 15.

<sup>811</sup> Indian MoU, Annual report 2018, *supra* note 808, Table 3 *Deficiencies by categories* and Table 8 *Comparison of Deficiencies by Categories*. p. 20 and 27.

**Graphic 6. Indian Ocean MoU. Deficiencies 2017 – 2018.**



**The Black Sea MoU** in 2017 recorded 1,173 deficiencies in respect of health protection, medical care and social security, together comprising 9.1 per cent of the total 21, 006 deficiencies in the Black Sea region in 2017 and listed the category as 4<sup>th</sup> in the top 5 of deficiencies.<sup>812</sup> A total 962 detainable deficiencies were recorded during PSC inspections. Deficiencies in respect of working and living conditions were not listed in the top 5 categories of deficiencies.<sup>813</sup>

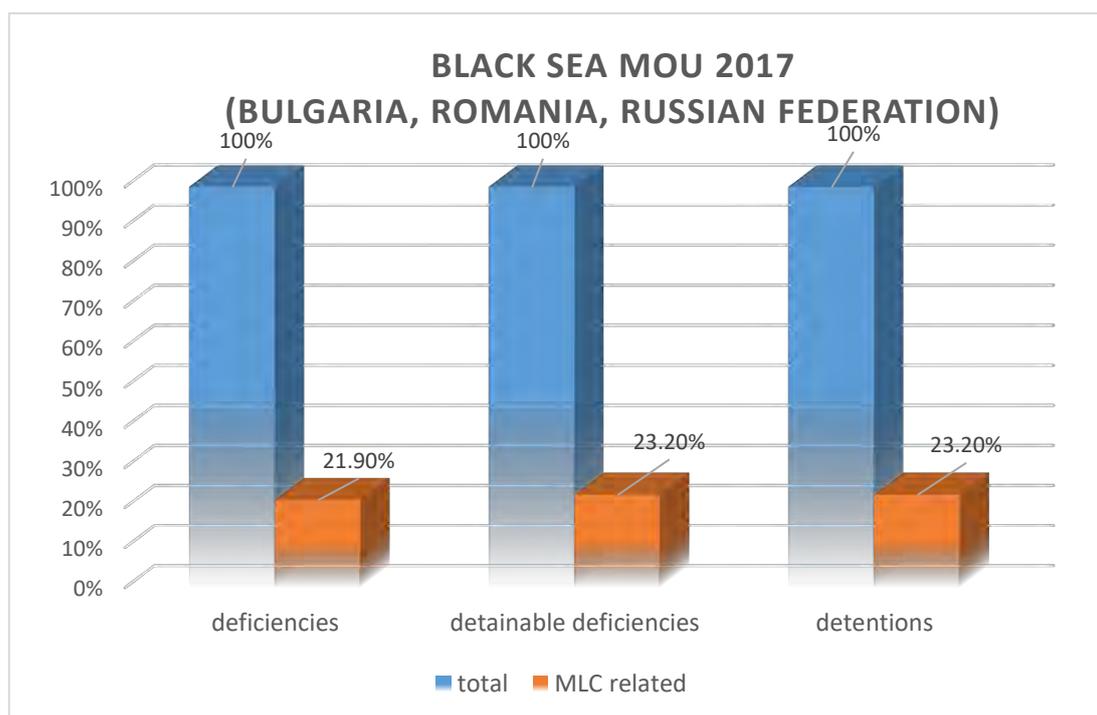
MLC compliance is verified during the 2,662 PSC inspections carried out in 2017 by Bulgaria, Romania (started on 24 November 2017) and the Russian Federation and the results are presented in Table 6. PSC from Bulgaria, Romania and the Russian Federation identified 2,912 deficiencies related to MLC issues, representing 21.9 per cent of total deficiencies (13, 268). Of the 586 detainable deficiencies, 56 were related to MLC detainable deficiencies, representing 23.2 per cent of the total detainable deficiencies. Of the 168 detentions, 39 (23.2 per cent) were due to MLC, 2006-related detainable deficiencies, which resulted in a 1.46 detention percentage.<sup>814</sup>

<sup>812</sup> See Inspection data by deficiency. Annual report 2017, Black Sea MoU, p. 12. Available at: <http://www.bsmou.org/category/docs/annual-reports/> Last visited in March 2020.

<sup>813</sup> *Ibid.*

<sup>814</sup> See Black Sea MoU, Annual report 2017, *supra* note 812, 2017 Maritime Labour Convention results., p. 12 -13.

**Graphic 7. The Black Sea MoU. Deficiencies 2017.**



According to the Annual Report 2018 of the Black Sea MoU, a total of 21,450 deficiencies were recorded during PSC inspections in 2018. A total of 278 detentions were warranted to ships found with serious deficiencies.<sup>815</sup>

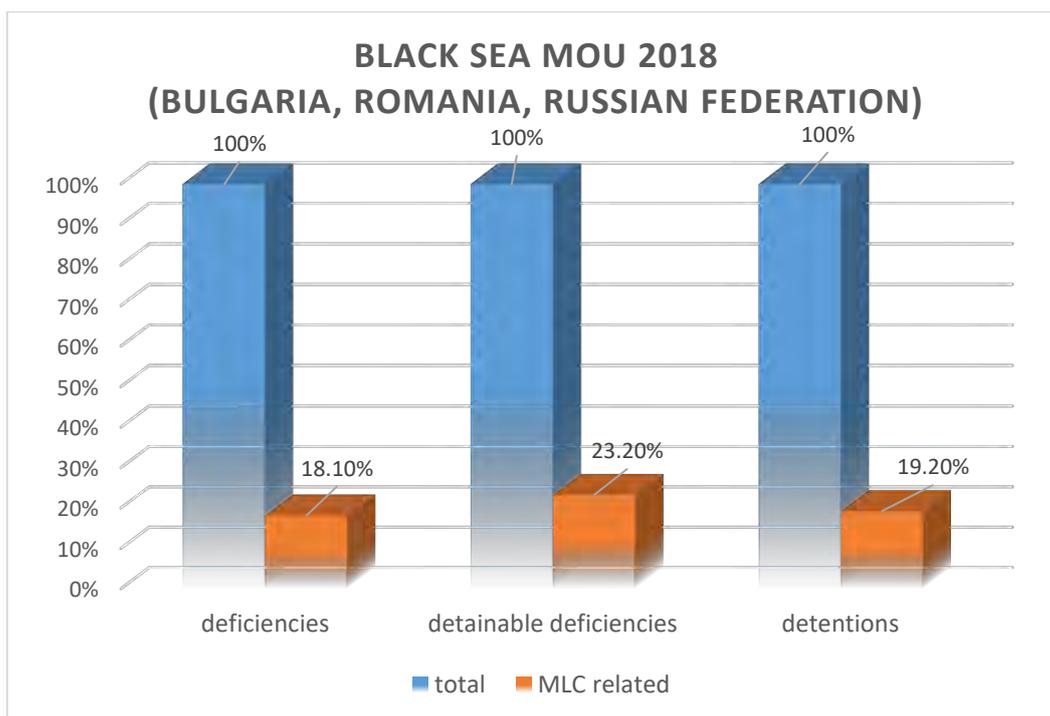
MLC compliance is verified during the 2,744 PSC inspections carried out in 2018 by Bulgaria, Romania and the Russian Federation and the results are presented in Table 6 of the Annual Report 2018.<sup>816</sup> PSC officers from Bulgaria, Romania and the Russian Federation identified 2,734 deficiencies related to MLC issues. This represented 18.1 per cent of the total deficiencies (15,100) issued. Of the 653 detainable deficiencies, 51 were related to MLC detainable deficiencies. This represented 23.2 per cent of the total detainable deficiencies. Of the 208 total detentions, 40 (19.2 per cent) were due to MLC related detainable deficiencies, which resulted in a 1.46 detention percentage.<sup>817</sup>

<sup>815</sup> See Foreword of Annual report 2018, Black Sea MoU, p. ii. Available at: <http://www.bsmou.org/category/docs/annual-reports/> Last visited in March 2020.

<sup>816</sup> *Ibid*, Table 6- 2018 MLC Results by Ship Flag, Ship Type and Ship Age, p. 13.

<sup>817</sup> Black Sea MoU, Annual report 2018, *supra* note 815, p. 12.

**Graphic 8. The Black Sea MoU. Deficiencies 2018.**



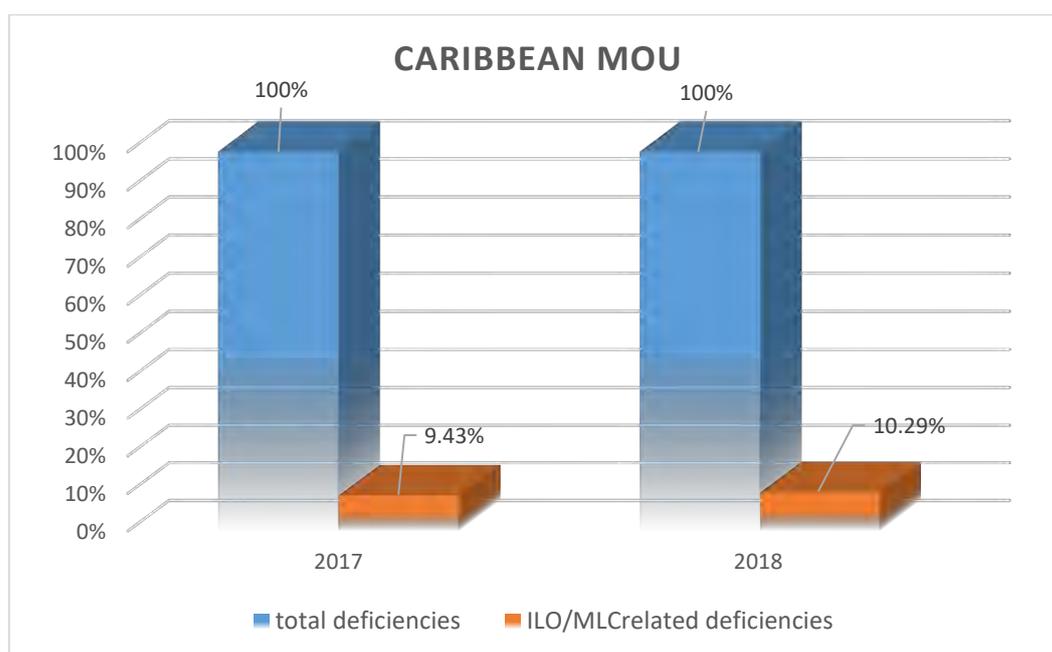
According to the Annual Report 2017 of the **Caribbean MoU**, PSC found 122 ILO/MLC deficiencies in 2017 representing 9.43 per cent of a total 1,294 deficiencies in 2017.<sup>818</sup>

According to Table 3 – *Deficiency by Categories* in the Annual Report 2018 of the Caribbean MoU there was 122 (10.29 per cent of total) ILO/MLC-related deficiencies from 1,186 total recorded deficiencies.<sup>819</sup>

<sup>818</sup> Annual Report 2017, Caribbean MoU, p. 16. Available at: <http://www.caribbeanmou.org/content/publications> Last visited in March 2020.

<sup>819</sup> *Ibid*, p. 16.

**Graphic 9. Caribbean MoU. Deficiencies 2017 – 2018.**



A total of 587 deficiencies were recorded by **Abuja MoU** PSC in 2017. Of them, on living and working conditions 45 (7.67 per cent) deficiencies were recorded,<sup>820</sup> ranking as the second largest area of deficiencies. In total, there were 16 detentions in 2017.<sup>821</sup>

In 2018 the total number of inspections was 2,409; deficiencies – 727; detentions – 14.<sup>822</sup> Of the total deficiencies, 13.07 per cent were related to the ILO/MLC.<sup>823</sup> Compared to the year 2017, there is an increase in deficiencies related to working and living conditions, almost double. Maybe it can be explained by the fact that the report from the year 2018 additionally reflects MLC-related deficiencies. Table 4: *Inspection Data per Category of Deficiency* lists other categories of deficiencies related to the ILO/MLC, 2006:

- Living and working conditions – 95 (13.07 per cent of total deficiencies)
- Labour conditions – conditions of employment – 3 (0.41 per cent)
- Labour Conditions – Accommodation, recreational facilities, food and catering – 3 (0.41 per cent)

<sup>820</sup> Annual Report 2017, Abuja MoU, p. 5; Table 4, *Inspection Data per Category of Deficiency*, p. 24. Available at: <http://www.abujamou.org/index.php?pid=yvs34jf67gy6g7893u> Last visited in March 2020.

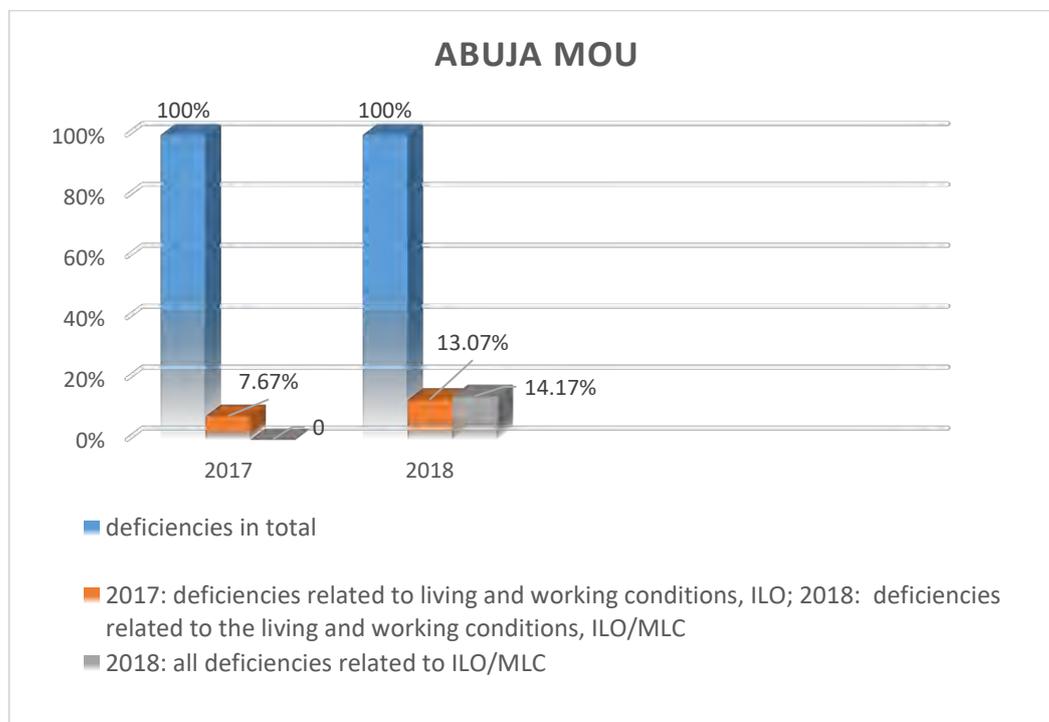
<sup>821</sup> *Ibid*, Table 1 *Inspection data by authority*, p. 11.

<sup>822</sup> Annual Report 2018, Abuja MoU, p. 16. Available at: <http://www.abujamou.org/index.php?pid=yvs34jf67gy6g7893u> Last visited in March 2020.

<sup>823</sup> *Ibid*, p. 7.

- Labour Conditions – Health protection, medical care, social security – 2 (0.28 per cent).<sup>824</sup>

**Graphic 10. Abuja MoU. Deficiencies 2017 – 2018.**



According to the 2017 report of the **Riyadh MoU**, in 2017, a total of 2,687 deficiencies were reported from 693 inspections. Safety of Navigation had the highest number of deficiencies with 524, followed by Ship Certificates with 245 and Life Saving Appliances with 213.<sup>825</sup> 38 vessels were detained.<sup>826</sup> There were 47 (1.75 per cent of the total) deficiencies listed as “Working and Living Conditions - Living Conditions” and 119 (4.43 per cent of total) deficiencies listed as “Working and Living Conditions - Working Conditions”<sup>827</sup> in 2017. The Annual Report 2018 of the Riyadh MoU was not available.

<sup>824</sup> Abuja MoU, Annual Report 2018, *supra* note 822, p. 27.

<sup>825</sup> Annual Report 2017, Riyadh MoU, p. 7. Available at: <https://www.riyadhmo.org/annualreport.html> Last visited in March 2020.

<sup>826</sup> *Ibid*, p. 13.

<sup>827</sup> Riyadh MoU, Annual Report 2017, *supra* note 825, p. 14.

Statistics in respect of working and living conditions, specifically, are not reflected in the 2017, 2018 and 2019 Annual Reports of **the United States Coast Guard**.<sup>828</sup> It should be noted that the US is party to Convention No. 147 but not to the MLC.<sup>829</sup>

Deficiencies related to working and living conditions comprised: 7.6 (Abuja MoU 2017, ILO working and living conditions), 9.25 (Tokyo MoU 2018, Convention No. 147 and MLC related deficiencies), 9.34 (Tokyo MoU 2017, Convention No. 147 and MLC related deficiencies) to: 21.09 (Black Sea MoU 2017, MLC related deficiencies) and 18.1 (Black Sea MoU 2018, MLC related deficiencies) per cent of total deficiencies. Information on detainable MLC deficiencies and detentions in result of MLC deficiencies is available only from the Black Sea MoU report. There is no uniform approach to reflect inspection results in relation to living and working conditions. Some PSC reports refer to working and living conditions generally; while some refer to the ILO/MLC-related issues and others to the MLC-related issues. Usually, the results in respect of these issues are very general and more detailed commentaries on the results are not available in the reports. Accordingly, it is not possible to make a relevant comparison of the results from different PSC regimes in respect of living and working conditions, in respect of the MLC specifically or in respect of specific MLC issues.

#### ***5.4.3. Considerations on the effectiveness of PSC***

A State's supervision and control over the implementation of international standards on its ships cannot be exercised unilaterally, in isolation from other States. The effectiveness of the inspection rests upon the awareness of maritime authorities to the MLC Standards and the uniform application of the Standards. However, there are many factors which can encumber this.

There is the risk that preference is given to national standards rather than to international. The ILO has provided a handbook, the *Guidelines for Port State Control officers carrying out inspections under the MLC, 2006*.<sup>830</sup> Although the Paris MoU in its Annex 9 gives examples of defects which may constitute grounds for a detention, the subjective opinion of a PSC officer has

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<sup>828</sup> Annual Report 2017., 2018., and 2019, United States Coast Guard (USCG) Port State Control (PSC). Available at: <https://www.dco.uscg.mil/Our-Organization/Assistant-Commandant-for-Prevention-Policy-CG-5P/Inspections-Compliance-CG-5PC-/Commercial-Vessel-Compliance/Foreign-Offshore-Compliance-Division/Port-State-Control/Annual-Reports/> Last visited in March 2020.

<sup>829</sup> See information on ILO conventions ratified by the United States, available at: [https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200\\_COUNTRY\\_ID:102871](https://www.ilo.org/dyn/normlex/en/f?p=1000:11200:0::NO:11200:P11200_COUNTRY_ID:102871) Last visited in March 2020.

<sup>830</sup> *Supra* note 765.

an important role. The role of a PSC officer, in deciding on the detention of a ship, is very delicate. According to the Paris MoU, decisions are based on the professional judgment of a PSC officer. Also, in respect of exercising control of the MLC:

*Annex 2 Maritime Labour Convention, 2006 (MLC, 2006) or Merchant Shipping (Minimum Standards) Convention, 1976 (ILO 147) and ILO 147 Protocol, 1996, if applicable.*

*1 Maritime Labour Convention, 2006 (MLC, 2006), if applicable.*

*1.1 Inspection regarding certificates of competency is dealt with in a PSCC Instruction. In the exercise of control of the MLC, 2006, the Port State Control Officer (PSCO) will decide, on the basis of the clear grounds listed in Annex 9 and his/her professional judgement, whether the ship will receive a more detailed inspection. All complaints not manifestly unfounded regarding conditions on board will be investigated thoroughly and action taken as deemed necessary. The PSCO will also use his/her professional judgement to determine whether the conditions on board give rise to a hazard to the safety or health of the seafarers which necessitates the rectification of conditions and may, if necessary, detain the ship until appropriate corrective action is taken. Reporting procedures for detentions are provided in Annex 4.<sup>831</sup>*

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<sup>831</sup> Paris MoU (42nd Amendment, effective 21 December 2019), *supra* note 771:

Annex 2 Maritime Labour Convention, 2006 (MLC, 2006) or Merchant Shipping (Minimum Standards) Convention, 1976 (ILO 147) and ILO 147 Protocol, 1996, if applicable,

See also Annex 1 and Annex 2 of Paris MoU, *supra* note 771:

*Annex 1 Ships of non-Parties and below convention size*

*2.2. In the exercise of his functions the Port State Control Officer will be guided by any certificates and other documents issued by or on behalf of the flag State Administration. The Port State Control Officer will, in the light of such certificates and documents and in his general impression of the ship, use his professional judgement in deciding whether and in what respects the ship will be further inspected. When carrying out a further inspection the Port State Control Officer will, to the extent necessary, pay attention to the items listed in 2.3 of this Annex. The list is not considered exhaustive but is intended to give an exemplification of relevant items.*

*Annex 2 Maritime Labour Convention, 2006 (MLC, 2006) or Merchant Shipping (Minimum Standards) Convention, 1976 (ILO 147) and ILO 147 Protocol, 1996, if applicable.*

*1 Maritime Labour Convention, 2006 (MLC, 2006), if applicable.*

*(...) 2. Merchant Shipping (Minimum Standards) Convention, 1976 (ILO 147) and ILO 147 Protocol, 1996, if applicable.*

*2.1 Inspections on board ships under ILO 147 and ILO Protocol 1996 will relate to:*

*.1 the Minimum Age Convention, 1973 (No. 138); or the Minimum Age (Sea) Convention (Revised), 1936 (No. 58); or the Minimum Age (Sea) Convention, 1920 (No. 7);*

*.2 the Medical Examination (Seafarers) Convention, 1946 (No. 73);*

*.3 the Prevention of Accidents (Seafarers) Convention, 1970 (No. 134) (Articles 4 and 7);*

*.4 the Accommodation of Crews Convention (Revised), 1949 (No. 92);*

*.5 the Food and Catering (Ships' Crews) Convention, 1946 (No. 68) (Article 5);*

*.6 the Accommodation and Crews (Supplementary Provisions) Convention, 1970 (No. 133);*

*.7 the Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180);*

*.8 the Officers' Competency Certificates Convention, 1936 (No. 53) (Articles 3 and 4).*

*Inspection regarding certificates of competency is dealt with in a PSCC Instruction. In the exercise of control of the conventions listed in .1 to .7 above, the Port State Control Officer will decide, on the basis of the clear grounds listed in Annex 9 and his professional judgement, whether the ship will receive a more detailed inspection. All complaints regarding conditions on board will be investigated thoroughly and action taken as deemed necessary. He will also use his professional judgement to determine whether the conditions on board give rise to a hazard to the*

A PSC officer's action is limited by the possibility of a claim against the relevant authority or State for compensation from the shipowner in the case of undue detention. If, after a more detailed inspection, the ship still does not conform to the requirements of the MLC the PSC officer may detain the ship until the non-conformities have been rectified.<sup>832</sup> Appeal against a detention by a PSC officer takes quite a long time and does not stop the process of detention. In this case, it is not possible to obtain the release of a detained vessel by simply getting a Letter of Guarantee from a P&I Club, as is the case with a ship arrest. Any detention of a ship leads to serious financial loss to the shipowner. The MLC contains a warning that all possible efforts need to be taken to avoid a ship being unduly detained.<sup>833</sup>

Many authors have pointed out a conflict of interest faced by port States: it is to its financial benefit not to impede its clients or future clients, which means that both port and flag States may show a degree of flexibility in applying regulation.<sup>834</sup> Bauer has pointed out that there may be an economic interest for port States by gaining a competitive advantage in shipping:

*Economic incentives for port states to conduct these inspections may exist as a direct result of competition within the shipping industry; it is in a nation's self-interest to ensure that none of its fellow shipping states are gaining a competitive advantage by ignoring the Convention's mandates. However, this assumes that the nations involved are in direct competition, which may not be true, as not all nations export the same products. Here, a problem of deleterious symbiotic relationships arises, whereby two nations may eschew the idea of reciprocal fairness and conveniently ignore each other's violations to enjoy the lower shipping costs that result. Such situations may also arise in instances where a pure importing nation, which has no interest in maintaining a ship registry or protecting the welfare of native seafarers, is dealing with a flag state. The importing nation's greatest interest would be a reduced price on imported goods, and the flag state's primary concern would be increasing its registry via the appeal of lax standards. In such an interaction, both nations could achieve their objectives by ignoring the Convention's mandates, and there are no provisions within the four corners of the Convention that would prevent them from doing so.*<sup>835</sup>

According to Chen, the availability of both financial and human resources has resulted in the efficacy of PSC to vary from port to port. Some PSC standards are below what is acceptable

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*safety or health of the seafarers which necessitates the rectification of conditions and may, if necessary, detain the ship until appropriate corrective action is taken. Reporting procedures for detentions are provided in Annex 4.*

<sup>832</sup> Standard A5.2.1, paragraph 6, MLC.

<sup>833</sup> Standard A5.2.1, paragraph 7, MLC, 2006.

<sup>834</sup> Ph. Boisson, *supra* note 112, p. 469.

<sup>835</sup> P. J. Bauer, *supra* note 17, p. 650.

in some developing regions. For instance, some ports may loosen the need to meet international standards in order to attract more shipping business and gain market advantages. It is the facultative nature of PSC that contributes to the emergence of ports of convenience.<sup>836</sup>

According to Grbić, detentions on the grounds of MLC deficiencies by flag State varies significantly in the Paris MoU region, 20 August 2013 – 31 December 2014:

*The number of detentions with recorded the MLC, 2006-related detainable deficiencies divided by the number of inspections (detention rate on the MLC, 2006 ground) varies significantly, even among port States with equal period of enforcement. The highest share of detained ships with the MLC, 2006-related detainable deficiencies occurred in Bulgaria and Sweden. It is interesting to note that Greece ranks high, although it began enforcement in January 2014. On the other hand, in Finland, Latvia, Lithuania and Norway ships were not detained based on MLC, 2006. There are many possible reasons for such difference in the MLC, 2006-related detention rates: characteristics of vessels calling in a specific country, and differences in the way inspections are done due to the process of adapting PSC procedures. Furthermore, training of PSCO, which is primarily maritime and technical, could contribute to the observed variation. Since the MLC 2006 is a labour and a maritime convention, a broad knowledge of both areas is needed for a successful implementation. A harmonised approach to treatment of deficient vessels is desirable in order to achieve goals of the MLC, 2006.*<sup>837</sup>

In 2016, the Paris MoU organized a Concentrated Inspection Campaign (CIC) on the MLC, during which a total of 3,674 inspections were carried out. A total of 42 ships were detained in line with the CIC Questionnaire, representing 1.1 per cent of the total.<sup>838</sup> However, this report does not contain information about in which port States the ships were detained.

Analysis of reports from different PSC regimes shows that the proportion of deficiencies related to working and living conditions varies from a 7 to 21 percentage from total deficiencies. Information on the number of detainable deficiencies in respect of working and living conditions is only contained in the reports from the Black Sea PSC (23.2 per cent of the total detainable deficiencies in 2017 and 2018).

The regime of PSC is to supplement a flag State's control over its ships. According to Chen, nowadays international treaties and practices are gradually shifting the burden of and the

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<sup>836</sup> G. Chen, D. Shan, *supra* note 38, p. 1-8.

<sup>837</sup> L. Grbić, D. Ivanišević, J. Čulin, "Detainable Maritime Labour Convention 2006-related deficiencies found by Paris MoU authorities", *Scientific Journal of Maritime Research*, Volume 29, 2015, p. 55. Available at: [file:///C:/Users/Sandra%20Lielbarde/Downloads/328\\_15\\_10\\_Grbic\\_Ivanisevic\\_Culin.pdf](file:///C:/Users/Sandra%20Lielbarde/Downloads/328_15_10_Grbic_Ivanisevic_Culin.pdf) Last visited in March 2020.

<sup>838</sup> Report of the 2016 Concentrated Inspection Campaign (CIC) on Maritime Labour Convention, 2006, *supra* note 470, p. 4.

opportunity for enforcement from the flag States to the port States; as, the limitation of flag State jurisdiction is widely acknowledged.<sup>839</sup> However, taking into account financial and political considerations of the port State to exercise enforcement over maritime labour matters, it can be said that the primary responsibility over the implementation of the MLC is on the flag State. According to Ozcayir, PSC is not, and can never be, a substitute for the proper exercise of flag State responsibility.<sup>840</sup>

PSC in ports is limited to a review of the MLC Certificate and DMLC, except in the circumstances specified in the MLC Code.<sup>841</sup> But the availability of a valid Certificates on board does not always mean that seafarers' rights are fully observed in practice.

## 5.5. Ship arrest

A ship arrest is a traditional maritime remedy for seafarers' claims, recognised by all maritime States.<sup>842</sup> In common law countries, in the action *in rem* for enforcement of maritime liens,<sup>843</sup> such as seafarers' claims for wages, the ship itself can be the defendant and there is no need for the claimant to locate the *in personam* defendant.<sup>844</sup> For example, the UK category of a truly *in rem* claim secured by a maritime lien can be brought against a ship irrespective of her present ownership and irrespective of any link with liability *in personam* on the part of the owner of the ship at the time the claim is brought.<sup>845</sup> An owner may take part in an action *in rem* if he

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<sup>839</sup> G. Chen, D. Shan, *supra* note 38, p. 1-8.

<sup>840</sup> Z. O. Ozcayir, *supra* note 33, 2001, p. 1.

<sup>841</sup> Regulation 5.2.1., paragraph 2, MLC.

<sup>842</sup> D. Fitzpatrick, M. Anderson, *supra* note 50, p. 211, 213.

<sup>843</sup> See in Ch. Hill, *supra* not 479, p. 119., 121:

*Maritime lien is privileged claim upon a ship, aircraft or other maritime property in respect of services rendered to, or injury caused by, that property. A maritime lien attaches to the property at the moment when the cause of action arises and remains attached (rather like a leech to human skin), travelling within it through changes of ownership. It is, however, inchoate or of little 'positive' value unless and until enforced by action in rem. It is not dependent upon possession nor is it defateted or extinguished because res may happen to be transferred to new ownership for value and without notice. It is a right which springs from general maritime law and is based on the concept that the ship (personified) has itself caused harm, loss or damage to others or to their property and must itself make good that loss. The ship is, on other words, the wrongdoer, nor its owners...The holder of maritime lien has a higher priority than other creditors in the event that the ship is sold.*

<sup>844</sup> Maritime liens are generally recognized in the various jurisdictions as giving right to proceed in rem: Canada, Hong Kong, New Zealand, Singapore, and South Africa adopt a similar approach to that in the UK. See: D. Greenberg, A. Millbrook, (eds.), *Stroud's judicial dictionary of words and phrases*, London, Sweet & Maxwell, 2000, Volume 3, p. 2380; S. C. Derrington, J. M. Turner, *The law and practice of admiralty matters*, Oxford, Oxford University Press, 2007, p. 7.; D. C. Jackson, *supra* note 56, p. 12, 29, 45.

<sup>845</sup> N. Meeson, J.A. Kimbell, *Admiralty jurisdiction and practice*, London, Informa, 2011, p. 85, 88, 96.

considers it to be appropriate to defend his property; but it is essentially an action against his property (*in rem*), not against him.<sup>846</sup> In civil law countries, the claimant may need to, at least, identify the *in personam* defendant and establish that the defendant would be liable.<sup>847</sup>

Legal ownership of ships may be acquired by operation of law, e.g., under a will or an order of a court, by gift or pursuant to contract.<sup>848</sup> The registration of the ship does not conclusively prove that the registered owner is the true legal owner. The register of ships is merely prima facie evidence of ownership.<sup>849</sup> The legal owner, registered in a ship register, may hold a ship in trust for a beneficial owner.

According to Bowtle and McGuinness:

*Ownership has been defined as a collection of the rights to uses and enjoy property, including the right to transmit those rights to others. It includes complete domination over, and all property rights to, the thing which is owned, and in its fullest sense incorporates a right to possession, enjoyment, control and disposal of that thing.*<sup>850</sup>

The international law on ship arrest is contained in the Arrest Convention 1952<sup>851</sup>, which is the main international regulation of ship arrest at the moment, having 31 Parties as of 28 February 2020.<sup>852</sup> The updated regulation of ship arrest is contained in the Arrest Convention 1999, having 12 parties as of 28 February 2020.<sup>853</sup>

Wages and other sums due to seafarers in respect of their employment on the ship are recognised as a maritime claim in accordance with both Conventions; accordingly, a ship can be arrested for such claims. In accordance with Article I (m) of the Arrest Convention, 1952, claims

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<sup>846</sup> Ch. Hill, *supra* note 479, p. 100.

<sup>847</sup> D. Fitzpatrick, M. Anderson, *supra* note 50, p. 213.

<sup>848</sup> Gr. Bowtle, K. P. McGuinness, *The Law of Ship Mortgages*, LLP, London, Hong Kong, 2001, p. 6.

<sup>849</sup> Gr. Bowtle, K. P. McGuinness, *ibid*, p. 15.

<sup>850</sup> Gr. Bowtle, K. P. McGuinness, *supra* note 848, p. 5.

<sup>851</sup> International Convention Relating to the Arrest of Sea-Going Ships, 1952. Available on: <https://treaties.un.org/doc/Publication/UNTS/Volume%20439/volume-439-I-6330-English.pdf> Last visited in March 2014.

<sup>852</sup> See status of the convention at: <https://treaties.un.org/pages/showDetails.aspx?objid=08000002801338ba> Last visited in March 2020.

<sup>853</sup> See status and text of the International Convention on Arrest of Ships, 1999 at: [https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg\\_no=XII-8&chapter=12&clang=\\_en](https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=XII-8&chapter=12&clang=_en) Last visited in March 2020.

arising for wages of masters, officers and crew are maritime claims that give the basis for ship arrest. The problem may arise in respect of other sums payable by the employer (taxes, social contributions, compensations etc.), as to whether they can be understood under the term “wages”. For example, according to Berlingieri, in England it was held that the wages concept included emoluments such as: victualling allowances and bonuses; the employer’s and employee’s national contributions; social benefit contributions; and insurance and pension contributions.<sup>854</sup> Also, Article 1 (o) of the Arrest Convention, 1999 states:

*Wages and other sums due to the master, officers and other members of the ship’s complement in respect of their employment on the ship, including costs of repatriation and social insurance contributions payable on their behalf.*

Both definitions also refer to crew which can cover different categories of persons. The term “crew member” can be used also as equivalent to the term “seafarer”. The protection by the arrest of the ship should be granted to all persons who are regarded as the seafarers according to the MLC. The MLC, in very broad terms, states that the seafarer is the person who is employed on a ship. Under Article 2, paragraph 1 (f) of the MLC, “seafarer” means any person who is employed, engaged or works in any capacity on board a ship to which this Convention applies. Generally, seafarers’ claims under the Arrest Conventions should cover all claims of any category of persons regarded as a seafarer under the MLC. However, there can be differences in the implementation of the MLC definition of “seafarer” in national law. Article 2, paragraph 3 of the MLC authorises the competent authority in each Member State, after consultation with the shipowners’ and seafarers’ organizations concerned, to decide in the event of doubt as to whether specific categories of persons are to be regarded as seafarers for the purpose of the MLC. ILO Resolution VII *Resolution concerning information on occupational groups*<sup>855</sup> provides Member States with guidelines which can be taken into account in deciding to grant seafarer status to a specific occupational group or not.

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<sup>854</sup> Fr. Berlingieri, *supra* note 651, p. 54.

<sup>855</sup> Resolution VII *Resolution concerning information on occupational groups*, *supra* note 194:

In granting seafarers status the following issues should be considered:

- (i) the duration of the stay on board of the persons;
- (ii) the frequency of periods of work spent on board;
- (iii) the location of the person’s principal place of work;
- (iv) the purpose of the person’s work on board;
- (v) the protection that would normally be available to the persons concerned with regard to their labour and social conditions to ensure they are comparable to that provided for under the Convention.

Theoretically, the differences in national law in respect of some specific categories of persons who are regarded as seafarers or not could be reason to try to arrest the ship in the country under whose jurisdiction it is likely the most favourable outcome will be received.

The definition of “seafarer” under the MLC is linked to the definition of “ship”. Also in this case, the competent authority in each Member State, after consultation with the shipowners' and seafarers' organizations concerned, in the event of doubt can decide whether this Convention applies to a ship or particular category of ships.<sup>856</sup> So, it should be taken into account if a person by way of ship arrest seeks reimbursement for his rights granted by the MLC.

Under the ship arrest regulation of many countries, in order to exercise the ship arrest for a maritime claim the shipowner's or another defendant's relationship to the particular ship is important. Availability of the information about the owner of the ship is crucial for effective enforcement of a ship arrest.

The Arrest Convention, 1952 does not define “shipowner”. The Article 3(4) of the Arrest Convention, 1952 contains reference to “registered owner”. It can be discussed whether the word “registered” was used in this Article with intention or not.<sup>857</sup> However, it is confirmed by case law that the term “owner” in the Arrest Convention, 1952 can also include the beneficial owner.<sup>858</sup> Additionally, according to Berlingieri, the arrest of a ship whose registered owner is not the person against whom the maritime claim has arisen has sometimes been allowed in various jurisdictions in cases where there is a particular link between the claimant and the registered owner of the ship.<sup>859</sup> As it follows from Article 3 of the Arrest Convention, 1952, the ownership relation to the arrested ship is very important. Article 3 (1) of the Arrest Convention, 1952 states:

*(...) a claimant may arrest either the particular ship in respect of which the maritime claim arose, or any other ship which is owned by the person who was, at the time when the maritime claim arose, the owner of the particular ship, even though the ship arrested be ready to sail; but no ship, other than the particular ship in respect of which the claim arose, may be arrested in respect of any of the maritime claims enumerated in article 1, (o), (p) or (q).*

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<sup>856</sup> Article 2, paragraph 5, MLC.

<sup>857</sup> Fr. Berlingieri, *Berlingieri on arrest of ships. Commentary on the 1952 and 1999 Arrest Conventions*, London, Informa, 2011., p. 308.

<sup>858</sup> D. C. Jackson, *supra* note 56, p. 265.

<sup>859</sup> Fr. Berlingieri, *supra* note 651, p. 62.

From the cited provision, it clearly follows that the claim must be related to the particular ship. No doubt claims for wages earned on a particular ship are considered to be in relation to the particular ship. The rule that the arrest of a ship is permissible when the owner of that ship is liable in respect of a maritime claim relating to that ship is not expressly stated in this provision. But according to Berlingieri, the general rule must necessarily be that the arrest is only permissible when the owner of the ship is liable; as, there is then a clear and strict link between the maritime claim, the ship and the owner of the ship.<sup>860</sup> However, the connection between the ship and claim is a condition which is sufficient when the claim is secured by a maritime lien following the ship into the hands of a *bona fide* purchaser.<sup>861</sup> Claims for seafarers' wages are generally recognised by national and international law as giving rise to a maritime lien.<sup>862</sup> The general requirement that the owner must be the person liable is, clearly established by the provision according to which also a ship other than that in respect of which the maritime claim has arisen may be arrested: if it was owned, at the time when the maritime claim arose, by the owner of the particular ship.<sup>863</sup>

A ship can be arrested not only for claim against an owner but also for claim against a bareboat charterer or person other than the registered owner, as Article 3 (4) of the Arrest Convention, 1952 provides:

*When in the case of a charter by demise of a ship the charterer and not the registered owner is liable in respect of a maritime claim relating to that ship, the claimant may arrest such ship or any other ship in the ownership of the charterer by demise, subject to the provisions of this Convention, but no other ship in the ownership of the registered owner shall be liable to arrest in respect of such maritime claim. The provisions of this paragraph shall apply to any case in which a person other than the registered owner of a ship is liable in respect of a maritime claim relating to that ship.*

The first sentence of the Article above has the effect of granting the claimant, who has a claim against the demise charterer, the right to arrest the ship in respect of which the claim arose or any other ship in the ownership of the charterer by demise. This right exists irrespective of the claim being secured by a maritime lien or not.<sup>864</sup> This provision can be used as the basis of ship

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<sup>860</sup> Fr. Berlingieri, *supra* note 651, p. 59; Fr. Berlingieri, *supra* note 857, p. 210.

<sup>861</sup> Fr. Berlingieri, *supra* note 857, p. 210., 213., 252.

<sup>862</sup> D. Fitzpatrick, M. Anderson, *supra* note 50, p. 216; D. C. Jackson, *supra* note 56, p. 12, 30, 261; N. Meeson, J. A. Kimbell, *supra* note 845, p. 64; Fr. Berlingieri, *supra* note 857, p. 221; Article 4 of International Convention on Maritime Liens and Mortgages, 1993. Available at: <https://treaties.un.org/doc/Publication/UNTS/Volume%202276/v2276.pdf> Last visited in March 2020.

<sup>863</sup> Fr. Berlingieri, *supra* note 857, p. 210.

<sup>864</sup> Fr. Berlingieri, *supra* note 857, p. 228.

arrest for seafarers' claims when the ship is operating under the demise charter and the demise charterer is responsible for seafarers' employment. In order to arrest another ship under ownership of the charterer, the claimant has to be aware of the person who is the demise charterer.

The wording of the second sentence of the above-mentioned Article seems to extend the right of arrest well beyond the case of a claim against the owner or bareboat charterer to any case in which the person other than the registered owner is liable in respect of the maritime claim relating to the ship.<sup>865</sup> The person other than the registered owner or bareboat charterer which can be liable in respect of the maritime claim and covered by this provision can be the ISM Company or other person acting as the MLC shipowner. This practice that an action arising out of a maritime claim must, in certain cases, be brought against a person other than the owner or bareboat charterer can differ from country to country. The practice that a claim can be brought against a manager in the place of the owner has been applied in Norway for a long time.<sup>866</sup> In Finland, for vessels covered under Chapter 7 of the Code of Judicial Procedure, arrest may be ordered only in respect of claims against the owner except where the claim is secured by a maritime lien; in which event, arrest is also possible if the debtor is the operator or charterer or other person who manages the vessel for the owner.<sup>867</sup> But this is not the case for all State Parties to the Convention and uniform interpretation of this issue has failed.<sup>868</sup>

The Arrest Convention, 1999 has somewhat different regulation on persons for whose claims a particular ship can be arrested. According to Article 3 (1) of the Arrest Convention, 1999 an arrest is permissible of any ship in respect of which a maritime claim is asserted if:

*(a) The person who owned the ship at the time when the maritime claim arose is liable for the claim and is owner of the ship when the arrest is effected; or*

*(b) The demise charterer of the ship at the time when the maritime claim arose is liable for the claim and is demise charterer or owner of the ship when the arrest is effected; or*

*(...) (e) the claim is against the owner, demise charterer, manager or operator of the ship and is secured by a maritime lien which is granted or arises under the law of the State where the arrest is applied for.*

Additionally, Article 3(3) of the Arrest Convention, 1999 states that:

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<sup>865</sup> Fr. Berlingieri, *supra* note 857, p. 228.

<sup>866</sup> Fr. Berlingieri, *supra* note 857, p. 229.

<sup>867</sup> Fr. Berlingieri, *supra* note 857, p. 215.

<sup>868</sup> Fr. Berlingieri, *supra* note 867, p. 233.

*(...) the arrest of a ship which is not owned by the person liable for the claim shall be permissible only if, under the law of the State where the arrest is applied for, a judgment in respect of that claim can be enforced against that ship by judicial or forced sale of that ship.*

Under Article 3(2) of the Arrest Convention, 1999 an establishing of ownership is always important for sister ship arrest:

*2. Arrest is also permissible of any other ship or ships which, when the arrest is effected, is or are owned by the person who is liable for the maritime claim and who was, when the claim arose:*

*(a) owner of the ship in respect of which the maritime claim arose; or*

*(b) demise charterer, time charterer or voyage charterer of that ship.*

*This provision does not apply to claims in respect of ownership or possession of a ship.*

The conclusion is that the establishing of ownership or another defendant's relation to a particular ship is very important in the arrest of the ship for seafarers' claims. The concept of *shipowner* in the conceptual ship arrest system (the link between the person liable and the particular ship) is different from the concept of *shipowner* in maritime labour regulation (no link between the responsible person and the particular ship necessarily exists).<sup>869</sup> The person other than the owner of the ship or bareboat charterer, like the ISM Company or other third party acting as the employer, which is considered as the shipowner responsible for seafarers' employment in national regulation implementing the MLC, in not all countries can be recognised as the shipowner under the meaning of the arrest of ship regulation. Accordingly, having information about the shipowner in the MLC Certificate (like the ISM Company or other third party acting as the employer) may not be enough to exercise effective arrest of a ship owned by the person not listed in the MLC Certificate and not indicated in the SEA. To arrest a particular ship for a claim against a person other than the owner, national law requirements need to be taken into account.

Today, after the MLC, a financial security document on board a ship is the first the seafarer has to look for in the case of a failure of the shipowner to meet its obligations. The MLC grants for seafarers the rights to direct action against the insurer mentioned in a financial security document. If before the MLC a ship arrest was the only instrument to get payments from the shipowner, who did not want to pay; then now, after the MLC, the situation has changed. The mandatory shipowner's financial security system, introduced by the MLC, decreases the role and

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<sup>869</sup> S. Lielbarde, "The concept of "shipowner" under new maritime labour law (MLC, 2006): does the shipowner own the ship? (comparative analysis of national law of Denmark, Finland, Germany, Norway and the United Kingdom)", WMU Journal of Maritime Affairs, Volume 17, Issue 2, June 2018, p. 244-245. Available at <https://link.springer.com/journal/13437/17/2/page/1>

importance of a ship arrest in respect of obtaining payments from a shipowner. Nevertheless, the arrest of the ship can still be used if financial security is not valid and other measures to obtain compensation from the shipowner have not worked. The MLC also contains reference to a ship arrest institution. States which have paid for seafarers' repatriation, instead of the shipowner, may arrest its ship to get reimbursement.<sup>870</sup>

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<sup>870</sup> Regulation 2.5, paragraph 6 of the MLC states that a Member which has paid the cost of repatriation of seafarers instead of a shipowner may detain, or request the detention of, the ships of the shipowner concerned, taking into account applicable international instruments, including the International Convention on Arrest of Ships, 1999, until the reimbursement has been made.

## VI Conclusions and recommendations

### 6.1. Conclusions

The conclusions contain an answer to the research question as well as a summary of the analysis carried out according to the objectives of the research.

**Answer to the research question: does the new maritime labour regulation – the MLC-- offer a solution to the problem of the identification of the responsible party in SEA's, and by this also better protection to seafarers compared to previous regulation?**

In general, the MLC offers better protection to seafarers compared to previous regulation. Measures and requirements introduced by the MLC, such as: financial security in respect of seafarers' abandonment and in respect of seafarers' contractual claims, application of the PSC system to maritime labour matters, the requirement to have an effective flag State control system over maritime labour matters, etc., no doubt is strengthening protection of seafarers' rights compared to maritime labour regulation before the MLC. One can only agree to the following, mentioned by De Larrucea:

*One is that, for the first time, the Convention grants juridical status to seafarers, including mechanisms for real implementation and effective protection, not merely theoretical proclamations of rights; and the second key point is that the Convention incorporates the labour aspects of seafarers' rights into Maritime Law, together with the commercial aspects (shipping) and those of maritime safety and marine pollution prevention, regulated generally by the IMO.<sup>871</sup>*

However, it should be noted that, in practice, not all MLC requirements work perfectly. Reports on cases of abandonment show that there are still ships which operate without valid insurance in place.

As regards the solution to the problem of the identification of the responsible party in SEA's, it could be said that the MLC offers sufficient regulation by defining the final responsible person – the shipowner, and requiring the information on this person to be inserted in the SEA. On the other hand, analysis of national law shows that there is a lack of uniformity in the

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<sup>871</sup> J. R. de Larrucea, "España y la ratificación de la Convención del Trabajo Marítimo 2006" (Barcelona: Universitat Politècnica de Catalunya 2011). Cited in Fr. Piniella, J. M. Silos, Fr. Bernal, *supra* note 44, p. 61.

implementation of the definition of “shipowner” in national law; as well, not always does national law clearly require information on the ultimate responsible person to be inserted in the SEA in case the SEA is signed by a third party. Differences in national law in respect of this issue are an obstacle to ensuring uniform enforcement of this MLC Standard. As well, regulation which does not declare clearly who is the final responsible person and does not require expressly to ensure that information on that person is always available to seafarers allows a responsible person to avoid liability by transferring it to a third party not being able to cover it financially.

The safety of the ship, cargo and environment is inseparable from the employment and labour conditions on board.<sup>872</sup> According to Mukherjee there are essentially two components to the shipboard human factor or the causes of human error. One comprises the level of proficiency and competence of seafarers to carry out their tasks with due regard to maritime safety, security and commercial efficiency and to protection of the marine environment. The other component is the welfare and well-being of the seafarer on which the first component inherently depends. Proficiency and competence can only be achieved through proper maritime education and training. The welfare and well-being of seafarers is achieved through a regime of maritime labour standards both at a national as well as an international level.<sup>873</sup>

In this regard, the ISM Code makes the following relevant point:

*The cornerstone of good safety management is commitment from the top. In matters of safety and pollution prevention it is the commitment, competence, attitudes and motivation of individuals at all levels that determines the end result.*<sup>874</sup>

Finally, it should be noted that the truth is that legislation alone does not change anything. It is only when the shipping industry, itself, acts proactively that the compass dial shifts from maximising profits towards ensuring seaworthiness and the safety of seafarers.<sup>875</sup>

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<sup>872</sup> P. Zhang, Edw. Phillips, *supra* note 1, p. 57, 58; Pr. K. Mukherjee, M. Brownrigg, *supra* note 2, p. 195.

<sup>873</sup> Pr. K. Mukherjee, M. Brownrigg, *supra* note 2, p. 195.

<sup>874</sup> Paragraph 6, Preamble of ISM Code.

<sup>875</sup> P. Zhang, Edw. Phillips, *supra* note 1, p. 59.

## **Summary of analysis carried out according to the objectives of the research**

The answer to the research question is based on results obtained according to the research objectives. The summary of these results is given below:

### **1) Analysis of international legal acts in the areas of maritime labour law and shipping in respect of the problem of the identification of the responsible shipowner.**

Within the scope of the first objective, the following international legal acts in the area of maritime labour law and shipping were analysed: UNCLOS, IMO conventions, ILO Conventions, UNCCRO's, the Vienna Convention on Consular Relations, 1963, as well as the EU acquis.

UNCLOS does not directly address the responsibility of shipowners towards the working and living conditions of seafarers working on their ships. UNCLOS is designed to establish obligations for States not for private parties. UNCLOS addresses, in general terms, the State's responsibility in respect of the seafarers employed on its ships.

The main objective of the IMO conventions is to cover a shipowner's responsibility for: ship safety, technical standards of a ship, safe crew manning, certification of seafarers and civil liability for different maritime claims caused by activities of a ship. Although seafarers' wellbeing and working and living conditions on board directly affect the safety of a ship, labour issues were not the primary target of the IMO conventions. Some issues related to the working conditions on board, now covered by the MLC, are also addressed by IMO conventions, like proper qualification, certification, medical fitness and training.<sup>876</sup> IMO conventions do not address issues in respect of concluding the SEA, signing the SEA or the identification of the responsible person for seafarers' claims. Not all IMO conventions contain a definition of the responsible entity for obligations specified in the conventions. IMO conventions covered by analysis define a shipowner, registered owner, company, operator, carrier or performing carrier as the person responsible for obligations under the conventions. These persons not always have ownership relation to a ship. Some conventions require an ownership link to the person responsible in respect of the implementation of the Convention. Under NAIROBI, BUNKER and CLC, an ownership link is required for the responsible person – the registered owner or, in the absence of registration, the person or persons owning the ship. BUNKER is the only Convention which also addresses joint and several liability of the owner of a ship and another person acting on behalf of the owner. None of the IMO

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<sup>876</sup> ISM Code, STCW.

conventions contain the phrase “regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner”, used to indicate the final responsibility of the shipowner, as it is stated by the MLC.

The term “company” is used by ISM Code to define the responsible person in respect of ship safety and security issues. According to the definition of “company” in ISM Code, the responsible person could be the owner of the ship, bareboat charterer or ISM Company.<sup>877</sup> Also, the definition of “company” in ISM Code was used to create the definition of the “shipowner” in the MLC; the ISM Code is aimed and focused towards company safety and environmental protection policy.<sup>878</sup> Accordingly, this definition in ISM Code, as well as other definitions of the responsible person contained in the IMO conventions, cannot be analysed from the maritime labour law perspective.

ILO conventions were the main source of maritime labour law before the MLC. However, most ILO conventions do not define the responsible party in respect of seafarers’ working and living conditions specified in the conventions. Under ILO conventions, the responsible person can be the owner of the ship, bareboat charterer, ISM Company<sup>879</sup> or any person with whom the seaman has contracted for service on board the vessel.<sup>880</sup> In most cases, for the person not being the owner, it is required that this person has assumed the responsibility for the operation of the ship from the shipowner and who on assuming such responsibility has agreed to take over all the attendant duties and responsibilities. Only under Article 2, paragraph 1 of Convention No. 8 for the responsible person, not being the owner, in every case of loss or foundering no additional requirements are required by this Convention. Neither the delegation of responsibility of the shipowner to other persons acting as the employer nor the joint and several liability of several persons involved in employment of seafarers is addressed by the ILO conventions.

Several ILO conventions establish the obligation for Member States to ensure that there is sufficient information submitted to the seafarer about the content of the SEA. According to the ILO conventions, the seafarer not only should be simply informed but it shall be assured that the seafarer understands the content of the SEA and that the necessary advice and explanation is also

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<sup>877</sup> Regulation 1, paragraph 2, Chapter IX *Management for safe operation of ships* of the Annex to the 1974 SOLAS Convention.

<sup>878</sup> High-Level Tripartite Working Group on Maritime Labour Standards (TWGMLS) (Second meeting), 14-18 October 2002. Two information papers prepared by the International Maritime Organization (IMO) for the meeting. Information paper I, p. 3, *supra* note 236.

<sup>879</sup> Article 1.1. (c), Convention No. 179, *supra* note 162; Article 2 (e), Convention No. 180, *supra* note 163; Article 1 (2) (g), Convention No.187, *supra* note 164.

<sup>880</sup> Article 2, paragraph 1, Convention No. 8, *supra* note 161.

provided, if necessary. Article 3, paragraph 1 of Convention No. 22<sup>881</sup> states that articles of agreement shall be signed both by the shipowner, or his representative, and by the seaman. However, information about a shipowner is not listed in the list of information to be inserted in the SEA.<sup>882</sup> None of the information and reports on the application of ILO conventions and recommendations, starting from 1932,<sup>883</sup> nor the Report of the CEARC Survey of the Reports on the Convention No. 147 and Merchant Shipping (Improvement of Standards) Recommendation (No. 155), 1976,<sup>884</sup> contain essential discussions raised in respect of the identification of the responsible shipowner for seafarers' employment to be identified in the SEA.

Accordingly, although there is a formal requirement in ILO conventions that information about a responsible shipowner is provided in the SEA and made available to the seafarer, the ILO conventions do not consistently regulate the issue of the identification of the responsible employer, a problematic issue in shipping practice (like the identification of the responsible employer in cases where more than one person is performing some obligation in respect of seafarer's recruitment and employment as well as the liability of different persons involved in employment of seafarers).

UNCCRO's, similar to UNCLOS, requires for the flag State to ensure that for ships which are entered into its register, the owners and operators are identifiable and accountable. Under UNCCRO's, an ownership link is required for the responsible person – the registered owner or, in

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<sup>881</sup> Convention No. 22, *supra* note 169.

<sup>882</sup> Convention No. 22, Article 6, paragraph 3, *supra* note 169:

3. *It shall in all cases contain the following particulars:*

- (1) *the surname and other names of the seaman, the date of his birth or his age, and his birthplace;*
- (2) *the place at which and date on which the agreement was completed;*
- (3) *the name of the vessel or vessels on board which the seaman undertakes to serve;*
- (4) *the number of the crew of the vessel, if required by national law;*
- (5) *the voyage or voyages to be undertaken, if this can be determined at the time of making the agreement;*
- (6) *the capacity in which the seaman is to be employed;*
- (7) *if possible, the place and date at which the seaman is required to report on board for service;*
- (8) *the scale of provisions to be supplied to the seaman, unless some alternative system is provided for by national law;*
- (9) *the amount of his wages;*
- (10) *the termination of the agreement and the conditions thereof, that is to say:*
  - (a) *if the agreement has been made for a definite period, the date fixed for its expiry;*
  - (b) *if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the seaman shall be discharged;*
  - (c) *if the agreement has been made for an indefinite period, the conditions which shall entitle either party to rescind it, as well as the required period of notice for rescission; provided that such period shall not be less for the shipowner than for the seaman;*
- (11) *the annual leave with pay granted to the seaman after one year's service with the same shipping company, if such leave is provided for by national law;*
- (12) *any other particulars which national law may require.*

<sup>883</sup> Information and reports on the application of Conventions and Recommendations available: <http://www.ilo.org/public/libdoc/ilo/P/09661/> Last visited in March 2020.

<sup>884</sup> *Supra* note 42.

the absence of registration, the person or persons owning the ship. Although UNCCRO's addresses the effective resolution of seafarers' claims,<sup>885</sup> it does not specifically address the issue of the identification of the owner in respect of seafarers' employment.

The Vienna Convention on Consular Relations, 1963, which regulates consular relations between States, does not address issues of a shipowner's liability or the identification of the responsible shipowner. Although, the supervision of respective vessels and their crews and the providing of assistance to them is also part of the consular functions of every sovereign State.

The EU has transposed large parts of the MLC into its legislative acts. The definitions and other provisions of the MLC are transposed into EU legislation as they stand, without modifications from the side of EU legislators. EU legislation implementing the MLC does not contain additional provisions not mentioned in the MLC and, accordingly, does not contain new aspects for analysis in respect of the research. With reference to the MLC, the EU has recently made changes in several general labour law legal instruments in order to also make them applicable to seafarers, who were previously excluded.<sup>886</sup> Amendments are very formal, mostly deleting previous exclusions in respect of seafarers, without taking into account the specific nature of seafarers' employment. In respect of the purpose of the research, it should be mentioned that Directive (EU) 2019/1152<sup>887</sup> recognises the situation, which is typical in shipping, when several persons have functions and responsibilities in respect of the same employees. According to Article 1, paragraph 5 of Directive (EU) 2019/1152<sup>888</sup>, it follows that a Member State has rights, not obligations, to establish regulation if obligations under Directive (EU) 2019/1152 are assigned to several persons. But Directive (EU) 2019/1152 does not contain more detailed requirements for this case, like for example, requirement to identify in the employment agreement both of these

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<sup>885</sup> Article 10 (6), UNCCRO's.

<sup>886</sup> Directive 2015/1794/EU, *supra* note 278; Directive (EU) 2019/1152, *supra* note 293.

<sup>887</sup> Paragraph 13 of the Preamble, Directive (EU) 2019/1152, *supra* note 293:

*(13) Several different natural or legal persons or other entities may in practice assume the functions and responsibilities of an employer. Member States should remain free to determine more precisely the persons who are considered to be wholly or partly responsible for the execution of the obligations that this Directive lays down for employers, as long as all those obligations are fulfilled. Member States should also be able to decide that some or all of those obligations are to be assigned to a natural or legal person who is not party to the employment relationship. Paragraph 1 and 2, Article 4, Directive (EU) 2019/1152:*

1. *Member States shall ensure that employers are required to inform workers of the essential aspects of the employment relationship.*
2. *The information referred to in paragraph 1 shall include at least the following:*
  - (a) *the identities of the parties to the employment relationship;(...)*

<sup>888</sup> Article 1, paragraph 5, Directive (EU) 2019/1152, *supra* note 293:

5. *Member States may determine which persons are responsible for the execution of the obligations for employers laid down by this Directive as long as all those obligations are fulfilled. They may also decide that all or part of those obligations are to be assigned to a natural or legal person who is not party to the employment relationship (...)*

persons in order to ensure that employees are informed about all responsible persons. Although it is declared by the European Commission that these inclusions will give seafarers the same rights as employers on-shore, it must be said that these amendments are very formal, without taking into account the specific characteristics of employment in shipping and the problems faced by seafarers in the application of their rights.

## 2) Analysis of the legal concept of *shipowner* under the MLC.

From the analysis of the MLC term and definition of “shipowner”<sup>889</sup>, it follows that the shipowner for MLC purposes can be not only the person who is the real owner of a ship but also other persons not having ownership relation to the ship – bareboat charterer or ISM Company; as well, assignment of shipowner status to other persons may be discussed. In shipping practice, the bareboat charterer and ISM Company are the persons who, on the basis of standard contracts in shipping, assume the responsibility for the operation of the ship from the owner. Also, the bareboat charterer usually further delegates ship operation to the ISM Company. The standard ship management contracts were updated accordingly to insert the MLC requirement that a person, by taking over a ship’s operation, agrees also to take over the duties and responsibilities imposed on shipowners in accordance with the MLC.<sup>890</sup>

The last part of the definition “*regardless of whether any other organization or persons fulfill certain of the duties or responsibilities on behalf of the shipowner*” indicates that the person as owner of the ship or other person assuming responsibility for ship operation, including responsibilities in relation to the MLC, has shipowner status and responsibility irrespective of other contractual arrangements the shipowner may have with other persons and organizations.

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<sup>889</sup> Article II (1) (j), MLC:

*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 fulfill certain of the duties or responsibilities on behalf of the shipowner.*

<sup>890</sup> See BIMCO MLC Clause for SHIPMAN 1998 and SHIPMAN 2009, *supra* note 217, containing following sub-clauses:

(a) *Subject to Clause 3 (Authority of the Managers), the Managers shall, to the extent of their Management Services, assume the Shipowner’s duties and responsibilities imposed by the MLC for the Vessel, on behalf of the Shipowner.*

(b) *The Owners shall ensure compliance with the MLC in respect of any crew members supplied by them or on their behalf.*

(c) *The Owners shall procure, whether by instructing the Managers under Clause 7 (Insurance Arrangements) or otherwise, insurance cover or financial security to satisfy the Shipowner’s financial security obligations under the MLC.*

It follows from the definition of the MLC term “shipowner” that there should be a shipowner – one responsible person for every particular case. And the information on that person – the shipowner should be inserted into the SEA<sup>891</sup> and signed by both the seafarer and the shipowner, or representative of the shipowner.<sup>892</sup> If the representative is not an employee of the shipowner then evidence of contract or similar arrangement between the shipowner and person signing the SEA on behalf of the shipowner should be enclosed in the SEA.<sup>893</sup> This requirement underlines the principle contained in the definition of “shipowner” that the shipowner retains its responsibility regardless of whether any other organization or persons fulfil certain of the duties or responsibilities on behalf of the shipowner.

From the analysis of the MLC preparatory reports, as well as from ILO opinion given in the ILO publication: *Maritime Labour Convention, 2006 (MLC, 2006). Frequently Asked Questions*, it is clear that the intention behind the MLC concept of *shipowner* was to provide greater clarity in identifying the single responsible party, irrespective of any subcontracting arrangements which might be in place.<sup>894</sup> However analysis of the mentioned documents does not reveal who can be this ultimate responsible person – the owner, bareboat charterer, ISM Company or any other person contracted for recruitment and placement of seafarers.

Accordingly, the shipowner can be the owner of the ship or another person, who took responsibility for operation of the ship and together with this also assumed responsibility in respect of the MLC requirements. No doubt; the bareboat charterer and ISM Company match these criteria. Conformity of other third parties can be discussed. Third parties, such as managers and agents, do not take on all obligations in respect of the operation of the ship; they can, however, contract with the owner to take on some specific obligations in respect of employment of the crew (only this obligation), which is part of ship operation. The legislative intention of the MLC drafters was to ensure that the responsibility of the shipowner is not diluted by endlessly passing it onto third parties. Accordingly, the general wording of the definition of “shipowner” in the MLC requires precise implementation nationally. Examples of national law presented in the thesis show that not all States did so.

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<sup>891</sup> Paragraph 4 (b), Standard A2.1. – Seafarers’ employment agreements, MLC.

<sup>892</sup> Paragraph 1 (a), Standard A2.1. – Seafarers’ employment agreements, MLC.

<sup>893</sup> Paragraph 1 (a), Standard A2.1. – Seafarers’ employment agreements, MLC.

<sup>894</sup> See opinion of Norway, UK, France, Germany, Spain, Panama, Denmark etc. at: The 94th (Maritime) Session of the ILC, Geneva, 7-23 February, 2006, Conference session documents: Report of the Committee of the Whole. P. 7/20-7/24 (Paragraph 125-151), *supra* note 5.

The interpretation of the term of “shipowner”, particularly the question who actually can be the shipowner – the final responsible party under the MLC, was raised after adoption of the MLC.<sup>895</sup> However, a clear answer did not follow and also the ILO’s publication only emphasises that there should be a final responsible party but does not contain an answer to the question of who from different entities traditionally participating in ship operation can be this final responsible party. At the moment, there is no uniform answer to this question; as well, no uniformity in the implementation of the concept of *shipowner* nationally and in application of it internationally. There is a need for some authoritative opinion, guidelines or recommendations to the shipping community in this respect.

### **3) Analysis of national law implementing the MLC concept of *shipowner* and requirements in respect of the identification of the responsible shipowner.**

National law of the following countries was analysed under the scope of this objective: Denmark, Estonia, Finland, Germany, Latvia, Norway, the Philippines, Spain and the UK.

First, it was researched who can be considered as the shipowner in respect of seafarers’ employment under national law of the particular country and does the national law sufficiently and clearly state who is the final responsible person in respect of seafarers’ claims.

To refer to the person liable for the responsibilities set out in the MLC towards seafarers, different terms are used in national law: “company”, “operator”, “principal”, “shipping company” and “shipowner”. Alongside the traditional shipping terms, the general labour law term “employer” is also often used by national law to refer to the person responsible for seafarers’ employment.

Not always does national law contain a definition of the term used to refer to the responsible person which could give direction to the meaning of this term. National law of some countries is very precise in defining who can be the responsible person: the owner of a ship, bareboat charterer or ISM Company. Law of other countries defines the responsible person in very broad terms.

The laws of many countries address the typical situation in shipping when a shipowner delegates ship operation to another person. In general, responsibility of a shipowner and such other persons is regulated in such a way that both the shipowner and that person are responsible towards seafarers employed on a particular ship, i.e., having joint and several responsibilities. However, it

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<sup>895</sup> Second meeting of the Preparatory Tripartite MLC, 2006 Committee (Geneva, 12–14 December 2011): Final report, GB.313/LILS/INF/1, Paragraph 187, *supra* note 235; Final report Second meeting of the Special Tripartite Committee established under Article XIII of the Maritime Labour Convention, 2006 (MLC, 2006), (Geneva, 8–10 February 2016), STCMLC/2016/7, paragraph 26, *supra* note 236.

is not always clearly pointed out by law who is the final responsible person from two or more persons having mutual responsibility.

The following countries have a regulation in place to ensure the responsibility of the ultimate responsible person in the case that the other organization or person performs specific tasks on behalf of the shipowner – Denmark, Germany, Norway and the UK. Philippine law regulates joint and several liability of different persons involved in seafarers' employment, the principal/employer and the licensed manning agency, but does not state that the principal is the final responsible party.

MLC Standard A2.1, paragraph 1(a) requires that seafarers working on ships shall have a SEA signed by both the seafarer and the shipowner. And if the SEA is signed by another person on behalf of the shipowner (not being an employee of the shipowner) there should be evidence of contractual or similar arrangements.<sup>896</sup> Paragraph 4 of the same Standard states that the shipowner's name and address have to be included in the SEA. From CEARC comments on national law implementing the MLC, it strongly follows that, irrespective of the employment arrangements involved, the seafarer is required to have an agreement signed by both the seafarer and the shipowner, as the responsible party, or a representative of the shipowner.

National law of all countries requires a written form of SEA and prescribes the content of SEA. The law of the following countries requires to include in the SEA information on the shipowner in case the employer is another person: Germany, Norway and the UK explicitly require that the seafarer shall be informed about the shipowner even in cases where a person other than the shipowner is acting as employer. Usually this information is inserted in the SEA. The remaining countries analysed do not have regulation in place requiring the insertion in the SEA of information on the shipowner in the case that the SEA is concluded by a third person acting as employer.

It can be mentioned that in the UK an Employers' Liability Register is set up, the aim of which is to assist consumers with employers' liability claims to trace the correct insurer for their claim, including to help those seafarers who have suffered injury or illness in the workplace to identify their employer's liability insurer. Every P&I Club in its Employers' Liability Register includes all vessels insured by the Club. Seafarers can search the Register for a vessel on which he has served by entering the name of the vessel or its IMO number and get information on insurance cover for its claims.<sup>897</sup>

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<sup>896</sup> Standard A2.1, paragraph 1(a), MLC.

<sup>897</sup> Information available at: <https://www.londonpandi.com/our-services/employers-liability-register/>

The research reveals a high disparity in the implementation of the MLC concept of *shipowner*. Some countries had chosen a very formal approach to the implementation of the concept of *shipowner* by inserting only the MLC definition of “shipowner” in their national law without more detailed regulation stating clearly who the final responsible person is and how to ensure that the seafarer always has information about this person.

The SEA is a matter that must be inspected by flag States for each ship operating under its flag.<sup>898</sup> It may also be the subject of an inspection by a port State on a ship in a foreign port.<sup>899</sup> To have effective control on MLC requirements in respect of the SEA, there should be uniform understanding on the content of the SEA, including on the required information in respect of the identification of the shipowner.

#### **4) Analysis of provisions in standard contracts in shipping in respect of delegation of responsibility for seafarers’ employment to third parties.**

In respect of the SEA, Standard A2.1, paragraph 1(a) and (c) of the MLC explicitly requires that there is a written SEA signed by both the shipowner and seafarer, and in the case that the SEA is signed by a third party representing the shipowner – evidence of contractual or similar arrangements should be enclosed. Standard A2.1, paragraph 4(b) of the MLC states that the SEA shall, in all cases, contain the shipowner’s name and address. Compared to the previous regulation in Convention No. 22, the MLC requires clearly that the SEA shall contain information (evidence of contractual or similar arrangements; for example, a power of attorney) about a responsible shipowner; also, in case the third person, not being an employee of the shipowner, is signing the SEA.

The most widely used bareboat charter form, BARECON, in its latest form BARECON 2017, does not particularly address obligations in respect of the MLC. It follows from the BARECON 2017 clauses that the responsibility in respect of crew employment is delegated to the bareboat charterer, including rights to contract a crew in its own name and act with all rights and responsibilities of the owner in respect of employment of crew. The owner’s obligation to comply with the standards of international conventions is delegated to the charterer, including to maintain financial security of responsibility in respect of third party liabilities as required by any government. Under national law of countries covered in Chapter III of the thesis, the bareboat

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<sup>898</sup> Standard A5.1.3, paragraph 1 and Appendix A5-I; Regulation 5.1.4, paragraph 1, Standard A5.1.4, paragraph 4, MLC.

<sup>899</sup> Standard A5.2.1, paragraph 2 and Appendix A5-III, MLC.

charterer can be considered as the MLC shipowner – the final responsible person in respect of seafarers’ employment. Provisions of BARECON 2017 are also such that the full responsibility for seafarers’ employment is delegated to the bareboat charterer. In the case when the ship is given under bareboat charter contract, not the owner of the ship will be indicated in the SEA as the shipowner but the bareboat charterer or maybe another person, on the basis of further contractual arrangements with the bareboat charterer.

The content of management contracts varies considerably. The most widely used forms of ship and crew management contracts SHIPMAN and CREWMAN were analysed within the research.

SHIPMAN is foreseen for technical, commercial and crew management. According to SHIPMAN 2009, the manager providing technical management services agrees to be appointed as the ISM Company, assuming the responsibility imposed by ISM Code. The manager’s responsibility in SHIPMAN is based on the traditional principles of agency law. The manager is acting as an agent on behalf of the owners. The owner retains liability for any liability, damage or expense arising in the course of performance of management services by the manager, unless it has resulted solely from negligence or wilful default of the manager. From the BIMCO MLC Clause, it follows that the manager shall ensure compliance with the MLC, on behalf of the shipowner to the extent of their management services agreed in the SHIPMAN contract.<sup>900</sup> Under the BIMCO MLC Clause, “shipowner” shall mean a person named as “shipowner” in the MLC Certificate. This person can be the same as the owner or another person. Accordingly, the manager can act as an agent on behalf of two different persons – the owner named as such in SHIPMAN and the person named as shipowner in the MLC certificate. Insurance cover in respect of shipowner’s liability required by the MLC shall be procured by the owner or under the owner’s instruction by the manager.<sup>901</sup> From the terms of SHIPMAN, it follows that the manager acts only as agent and the owner remains the principal with ultimate responsibility. Under the law of agency, a principal retains responsibility only if the manager makes it clear in his dealing with third parties that he is acting only as an agent and for and on behalf of the owner, disclosing the existence and

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<sup>900</sup> BIMCO MLC Clause for SHIPMAN 1998 and SHIPMAN 2009, *supra* note 218, containing following sub-clauses:  
(a) *Subject to Clause 3 (Authority of the Managers), the Managers shall, to the extent of their Management Services, assume the Shipowner’s duties and responsibilities imposed by the MLC for the Vessel, on behalf of the Shipowner.*  
(b) *The Owners shall ensure compliance with the MLC in respect of any crew members supplied by them or on their behalf.*  
(c) *The Owners shall procure, whether by instructing the Managers under Clause 7 (Insurance Arrangements) or otherwise, insurance cover or financial security to satisfy the Shipowner’s financial security obligations under the MLC.*

<sup>901</sup> *Ibid.*

name of his principal. Otherwise, the manager will be personally liable towards the third parties with whom he contracts, apart from potential liability towards the owner for breach of the agency arrangement.<sup>902</sup>

However, under national law, the manager – ISM Company, crew manager and other persons, being agents in relations with the principal, can be declared as the final responsible person in respect of the MLC obligations. This has been taken into account by the drafters of the BIMCO MLC Clause. The BIMCO MLC Clause was designed in such a way so that the manager is covered by the MLC definition of “shipowner”. To avoid identifying managers contractually as the “shipowner”, which could come into conflict with flag State legislation, a shipowner in the MLC Clause for SHIPMAN is defined as the person named on the MLC Certificate issued for the vessel.<sup>903</sup> If under national law, the ISM Company is declared as the shipowner, then it has no obligation to enclose information in the SEA on its principal – the owner or bareboat charterer. The owner, in this case, stays in the background, unidentified for the seafarer.

The standard contract CREWMAN deals with the specific management of crew. Like under the SHIPMAN contract, in CREWMAN A the manager’s and owner’s relations are relations of principal and agent. As well, from the BIMCO MLC Clause it follows that the manager assumes the shipowner’s obligations on behalf of the shipowner (as defined in the MLC Certificate) imposed by the MLC to the extent of their management services agreed in the CREWMAN A contract.<sup>904</sup> The BIMCO CREWMAN MLC Clause contains the same definition of “shipowner” – the shipowner is the person named in the MLC certificate. The difference from the SHIPMAN contract is that the manager will not be an ISM Company under CREWMAN A. According to national law of several countries, the crew manager, not being also an ISM Company, can be recognised as the shipowner.<sup>905</sup> A crew manager acting on the basis of the CREWMAN A contract could fall under the MLC definition of “shipowner” – i.e. it is another organization, the manager, who has assumed the responsibility for the operation of the ship from the owner (in this case, only in part, for crew manning) and who, on assuming such responsibility, has agreed to duties of the

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<sup>902</sup> I. Vella, *supra* note 490, p. 106., 107.

<sup>903</sup> MLC Clauses for BIMCO Contracts, *supra* note 218, p. 3.

<sup>904</sup> Also under BIMCO MLC Clause for CREWMAN A/ CREWMAN B 1999 and 2009, *supra* note 218, managers are acting as agents on behalf of shipowners in respect of the MLC, 2006 obligations:

*a) The Crew Managers shall, to the extent of their Crew Management Services, ensure compliance with the MLC, on behalf of the Shipowner, in respect of the Crew supplied by the Crew Managers.*  
*b) The Owners shall procure, under Clause 8 (Insurance Policies) or otherwise, insurance cover or financial security to satisfy the Shipowner’s financial security obligations under the MLC.*

<sup>905</sup> For example, Denmark, Finland, Germany, Latvia, Philippines.

shipowner imposed by the MLC. In respect of CREWMAN A, the crew manager has the same dual role as in the case of SHIPMAN. According to CREWMAN A, the manager is acting as agent on behalf of the owner stated in CREWMAN A but in respect of MLC obligations, the manager acting as agent on behalf of the shipowner, stated in the MLC Certificate. On the one hand, according to the terms of CREWMAN A, the manager is acting as the agent of the owner and therefore SEA should be signed by the manager as the agent on behalf of the owner. But on the other hand, according to the BIMCO MLC Clause, the crew manager in respect of the MLC obligations acting on behalf of the shipowner (person stated in the MLC Certificate). If the shipowner is different from the owner, the SEA will contain information on the shipowner (the person in the MLC Certificate), not the owner (the person who has initial responsibility for the crew and who is the manager's principal). As it was mentioned above, the crew manager, itself, can be recognised as the shipowner under the national law of some countries, which means that, in such a case, the SEA can contain information only on the crew manager as shipowner but the actual final responsible person is not identified.

Legal relations of the owner and crew manager in the CREWMAN B contract are based on different principles than in CREWMAN A. Under terms of CREWMAN B, the manager shall be the employer of the crew and carry out management services in its own name. However, like in other management contracts, the crew manager is not liable to the owners for any liability, damage or expense arising in the course of performance of management services by the manager, unless it has resulted solely from negligence or wilful default of manager. The obligation to take out insurance cover for the shipowner's financial obligations under the MLC also rests on the owner. According to the BIMCO MLC Clause, the same as for CREWMAN A, the manager assumes the shipowner's obligations imposed by the MLC on behalf of the shipowner to the extent of their management services agreed in the management contract.<sup>906</sup> Under CREWMAN B, the manager is acting as the principal on behalf of the owner but in respect of the MLC obligations as the agent on behalf of the shipowner – the person declared as such in the MLC Certificate. In this case, the SEA should contain information on the person stated in the MLC Certificate. If the crew manager, itself, is recognised as the shipowner under the national law of some countries, information only on the crew manager will be in the SEA. In this case, there is no conflict between a crew manager's

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<sup>906</sup> Also, under BIMCO MLC Clause for CREWMAN A/ CREWMAN B 1999 and 2009, *supra* note 218, managers are acting as agents on behalf of shipowners in respect of the MLC, 2006 obligations:

- a) *The Crew Managers shall, to the extent of their Crew Management Services, ensure compliance with the MLC, on behalf of the Shipowner, in respect of the Crew supplied by the Crew Managers.*
- b) *The Owners shall procure, under Clause 8 (Insurance Policies) or otherwise, insurance cover or financial security to satisfy the Shipowner's financial security obligations under the MLC.*

status in CREWMAN B and under national law; because, under CREWMAN B a crew manager is acting as a principal.

The interaction of the terms of standard contracts for ship management and the national implementation of the MLC concept of *shipowner* can create legal disputes on who is actually the final responsible person in respect of seafarers' employment. Taking into account national implementation of the MLC concept of *shipowner*, in some countries the final responsible person can be left undisclosed in the SEA. That's because the MLC definition of "shipowner" is drafted in wide terms and there is no uniform approach to its implementation nationally.

Without the afore-mentioned standard contracts there can be other contracts on the providing of recruitment and placement services. Content of these contracts varies very much. Under the SHIPMAN and CREWMAN contracts, the managers can subcontract their obligations to other persons. Such third persons can be a small company operating in a third country without financial possibilities to cover seafarers' loss in the case of a shipowner's failure. The national law of some countries has such a flexible interpretation of the MLC concept of *shipowner* that also such a small company can be indicated in the SEA as the shipowner or employer without enclosing information on the real responsible person. The ILO does not give a direct answer on the question if such third persons, such as agents, can be recognised as the responsible shipowner.<sup>907</sup> The same can be asked in respect of crew management as a separate service – does the person providing only crew management services fit with the requirement "has assumed responsibility for the operation of the ship from the owner", required for a person to be qualified as the MLC shipowner.

The general conclusion is that it is very important who is considered the shipowner by national law and stated as such in the MLC Certificate. This person should be the one who actually is in possession of the ship as well as financially able to take on the liability in respect of MLC obligations. There is doubt that such a person can be a company providing only crew management services or an agent providing some service in the employment process. If such a person is stated as the shipowner in the MLC Certificate, the actual responsible person stays in the background without revealing its identity to the seafarer.

ITF standard forms of CBA require that the information on the registered owner, beneficial owner, crew/technical management and manning agent should be inserted in the contract.<sup>908</sup> If the information on the registered owner and beneficial owner are inserted in the CBA, which should be available on board a ship, then this information could also be available to seafarers on board.

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<sup>907</sup> ILO publication: FAQ on the MLC, *supra* note 240, p. 36, 38.

<sup>908</sup> Paragraph 2 of the Preamble and Schedule 1, TCC Special Agreement template – 2019, *supra* note 537.

However, this cannot be an excuse not to indicate the final responsible person in respect of seafarers' employment in the SEA.

#### **5) Comparative analysis of security measures available to seafarers after the MLC.**

Under national law of many countries, implementing the requirement of the MLC for financial security in respect of seafarers' repatriation and long-term disability due to an occupational injury, illness or hazard is ensured with the mandatory P&I insurance for these matters. The MLC changed the commercial necessity for P&I insurance to the statutory requirement in respect of seafarers' claims. Since application of the MLC amendments 2014, the relationships of the insurer and the insured in respect of potential seafarers' claims are governed not only by the terms and conditions of the insurance contract but also by the MLC and applicable national law implementing the MLC.

Since the MLC amendments 2014 came into force on 18 January 2017, there has been sufficient legal regulation put in place to ensure effective protection of seafarers. Usually P&I insurance is used to ensure the MLC requirement in respect of financial security. Documentary evidence of financial security, containing specific information, should be on board in an available place for seafarers.<sup>909</sup>The MLC amendments 2014 by requiring to have a financial security for repatriation in cases of abandonment expands the initial requirement for financial security for repatriation in the MLC original version.<sup>910</sup> In respect of financial security for repatriation, the MLC gives the definition of what is understood under the term "abandonment", and precisely lists what should be covered by financial security in cases of abandonment, what travel expenses and what necessary maintenance and support.<sup>911</sup> The MLC lists minimum requirements for financial security in respect of the death or long-term disability of seafarers due to an occupational injury; illness or hazard, as set out in: national law, the SEA or the collective agreement, i.e., contractual claims.<sup>912</sup> It is important that seafarers should have direct access to providers of financial security.<sup>913</sup> The MLC regulates also termination of financial security so that it should not be

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<sup>909</sup> Standard A5.2.2, paragraph 6 and 7; Standard A4.2.1, paragraph 11, MLC.

<sup>910</sup> Standard A2.5.2, paragraph 2, MLC.

<sup>911</sup> Standard A2.5.2, paragraph 5, 9, 10, MLC.

<sup>912</sup> Standard A4.2.1, paragraph 8, MLC.

<sup>913</sup> Standard A2.5.2, paragraph 4; Standard A4.2.1, paragraph 8, MLC.

terminated without prior notification to the flag State.<sup>914</sup> In respect of financial security for contractual claims the MLC requires that seafarers also receive prior notification on the termination of the financial security.<sup>915</sup>

However, in practice, the requirement of financial security is not always fully implemented. In the information paper submitted by the ITF on behalf of the Seafarers Group to the Third Meeting of the Special Tripartite Committee of the MLC, 2006 (Geneva 23-27 April 2018), one of the conclusions was:

*(...) Whilst definition of abandonment is quite clear, the circumstances surrounding abandonment and the relationships between flag state, shipowners, their insurers and other entities with a commercial interest in the vessel are extremely varied.*<sup>916</sup>

The report from the IMO/ILO joint database of abandonment of seafarers for a period of one year since entry into force of the MLC Amendments 2014 shows that of 41 cases of abandonment where insurance was required under the MLC, 22 cases had valid insurance cover; in 3 cases the insurance cover was cancelled and in 16 there was no insurance cover (Graphic 3).<sup>917</sup> Accordingly, about in half of all cases there was no valid insurance cover. It leads to conclude that there is no effective control from the flag States on the termination of financial securities. Maybe the reason for this is partly the fact that the MLC only establishes the obligation that information on the termination of financial security is submitted to the flag State but does not expressly require for the flag State to control the termination dates and does not require to submit to the flag State information on a new security when the previous is coming to an end.

As of January 2020 the abandonment of seafarers remains a serious issue, including in those cases, when MLC amendments 2014 apply.<sup>918</sup> *Analysis of incidents of abandonment for the period 1 January to 13 December 2019* submitted by the ITF to the 107th session of the IMO

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<sup>914</sup> Standard A2.5.2, paragraph 11; Standard A4.2.1, paragraph 12, MLC.

<sup>915</sup> Standard A4.2.1, paragraph 12, MLC.

<sup>916</sup> Information paper submitted by the ITF on behalf of the Seafarers Group to the Third Meeting of the Special Tripartite Committee of the MLC, 2006 (Geneva 23-27 April 2018), p. 9-10, *supra* note 236.

<sup>917</sup> See Information paper submitted by the ITF on behalf of the Seafarers Group to the Third Meeting of the Special Tripartite Committee of the MLC, 2006 (Geneva 23-27 April 2018), p. 7, 9-10, *supra* note 236.

<sup>918</sup> Report on the IMO/ILO joint database of abandonment of seafarer, submitted by the ILO and IMO Secretariats to LEG 107/4 13 December 2019, 107th session of IMO Legal Committee 16-20 March, 2020, *supra* note 591; Analysis of incidents of abandonment for the period 1 January to 13 December 2019, submitted by the International Transport Workers' Federation to LEG 107/4/1 13 December 2019, 107th session of IMO Legal Committee 16-20 March, 2020, *supra* note 595.

Legal Committee 16-20 March, 2020 discovered that of the 13 cases in which insurance was required, only 8 had valid cover<sup>919</sup> ; and of the 8 cases in which valid insurance was in place, only one case resulted in the insurer paying wages and repatriation as per the requirements of Standard A2.5.2 of MLC<sup>920</sup> (Graphic 3). It is also noted that in all cases in which insurance was present, some form of resolution was reached.<sup>921</sup> Accordingly, valid insurance cover facilitates some resolution in respect of seafarers' abandonment; but, not in all cases valid insurance ensures that the seafarers will be repatriated and will receive payments fully according to the MLC amendments 2014. ITF noted that the requirements of the MLC are clear; yet, several vessels seem to be able to trade internationally despite non-compliance, without encountering problems.<sup>922</sup> The conclusion of the ITF is that it is the third year after the MLC amendments 2014 came into force and there continues to be problems in the practical implementation of Standard A2.5.2 of the MLC – vessels continue to operate without valid insurance in place and flag and coastal States fail to hold these owners responsible.<sup>923</sup>

India and the ICS, in papers submitted to the 107th session of the IMO Legal Committee 16-20 March, 2020, expressed a specific concern related to the implementation of Standard A2.5.2 of the MLC, i.e., due to non-availability of replacement crew the seafarers who have completed their contract and are willing to be repatriated, or even those who have been deemed abandoned as per the provisions of the MLC, cannot be repatriated.<sup>924</sup>

Within flag State responsibilities, under the MLC, an important place is devoted to the effective procedure of the handling of seafarers' complaints. Although it is required to treat confidential the source of the complaint, in practice, it is very difficult to keep an individual claimant's personality fully confidential in the investigation of his claim. Often, there are cases when a claimant soon after submitting a claim is dismissed from work. It is very difficult to prove

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<sup>919</sup> ITF analysis, paragraph 11.

<sup>920</sup> ITF analysis, paragraph 13.

<sup>921</sup> ITF analysis, paragraph 14.

<sup>922</sup> ITF analysis, paragraph 26.

<sup>923</sup> ITF analysis, paragraph 24, 26.

<sup>924</sup> Provisions of financial security in case of abandonment of seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury to, or death of seafarers, submitted by India to LEG 107/4/2 13 December 2019, 107th session of IMO Legal Committee 16-20 March, 2020, paragraph 6, *supra* note 606; Provisions of financial security in case of abandonment of seafarers, and shipowners' responsibilities in respect of contractual claims for personal injury to, or death of seafarers, submitted by the International Chamber of Shipping (ICS) to LEG 107/4/3, 10 January 2019, 107th session of IMO Legal Committee 16-20 March, 2020, paragraph 13, *supra* note 610.

that the reason for dismissal was a seafarer's claim and no other reasons officially provided by the shipowner.

The next element for seafarers' rights protection, according to the MLC, is an effective inspection and certification system of maritime labour conditions by the flag State. Every MLC Member State should duly inspect the ships registered under its flag and issue a MLC Certificate evidencing that working and living conditions on a ship are in compliance with the MLC. According to the MLC, a flag State may authorise other organizations to carry out inspections or to issue Certificates or to do both, which is usual practice. The MLC prescribes the requirements the organizations should meet regarding competency in respect of the MLC aspects. Only in establishing oversight procedures is it recommended for flag States to take into account IMO guidelines. Relevant IMO instruments regulating authorization of RO's do not address the competence issues of RO's in respect of the inspection of maritime labour conditions according to the MLC. RO's have an important role in the process of improving the treatment of seafarers; since, in most flag States, their responsibilities have been delegated in respect of inspection of maritime labour conditions to the RO's. Taking into account that RO's are initially foreseen as for supervision of ship safety and are paid by owners, there is concern on the independence and degree of uniformity these organizations can ensure in supervision of maritime labour conditions. In result of analysis of RO's guidelines in respect of the MLC, it was discovered that RS Guidelines precisely state that in most cases a shipowner in respect of the MLC obligations is an ISM Company. ABS Guidance Notes containing the definition of "shipowner" as per the MLC do not specify who actually can be the shipowner. In respect of information on the shipowner in the SEA, guidelines of both RO's specify that in the case that the SEA is signed by a third party, clear information on the basis of the authorisation of that person should be enclosed. Unfortunately, the MLC guidelines of only two of these RO's (of IACS Members) were available on their websites. It is not possible to conclude if others RO's have similar guidelines.

Next, the MLC establishes obligations in respect of the supervision and control of SRPS, operating in a Member State's territory. Private SRPS should have a system of protection to be established by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a SRPS or the relevant shipowner to meet its obligations to them, as required under Standard A1.4, paragraph 5(c)(vi) of the MLC.<sup>925</sup> Similar to the requirement for the shipowner to have financial security, also this standard has created questions about the practical implementation of it. It should be concluded that measures in

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<sup>925</sup> Standard A1.4, paragraph 5 c) vi), MLC.

respect of the correct and effective implementation of a SRPS system of protection is not yet clear. Although this requirement, on the one hand, can be an important measure for seafarers to get compensated for a shipowner's failure to meet his obligations; on the other hand, it can impose disproportionate responsibility on the SRPS provider.

The MLC contains provisions attempting to facilitate extraterritorial application of the MLC Standards by Member States. Under the MLC, the Member State shall require that shipowners of ships that fly its flag, who use RPS based in countries where the MLC does not apply, ensure, as far as practicable, that those services meet the requirements of the MLC. In practice, the easiest way to ensure that foreign SRPS operate according to the MLC is to choose services from the MLC country. This requirement is expressly implemented in German and Danish national law. As well, each Member State has the responsibility to ensure the implementation of the requirements of the MLC on working and living conditions of seafarers not only on their ships but also regarding the recruitment and placement of seafarers that are its nationals, are resident or are otherwise domiciled in its territory, to the extent that such responsibility is provided for in the MLC.<sup>926</sup> In practice, each Member State can effectively enforce the requirements of the MLC only in respect to the operation and practice of SRPS established in its territory. Although the MLC requires, generally, to take responsibility by every Member State on recruitment and placement of all their nationals, in practice, the Member State has jurisdiction and control on recruitment and placement only in its territory. Since many seafarers are recruited through foreign crewing agencies or crewing agencies in a Member State for a shipowner located in another country the possibilities of Member States to have control over the full recruitment and placement process and on future working and living conditions of its nationals is limited.

The MLC expressly incorporates the MLC standards under the PSC regime. Since the MLC came into force, PSC is the new protection element for seafarers who have not been paid or experience the breach of other rights. Unpaid wages are the deficiency leading to a ship detention by PSC authority. Usually the inspection in a foreign port will be limited to the MLC Certificate and DMLC.<sup>927</sup> But shipping practice shows that valid Certificates do not always guarantee the compliance with the Conventions. Therefore, in the absence of valid Certificates or documents,<sup>928</sup>

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<sup>926</sup> Regulation 5.3, paragraph 1, MLC.

<sup>927</sup> Regulation 5.2.1, paragraph 2, MLC.

<sup>928</sup> Annex 10 *Examination of certificates and documents*, Paris MoU, *supra* note 771:

*At the initial inspection the Port State Control Officer will, as a minimum and to the extent applicable, examine the following documents:*

*.70 Maritime Labour Certificate and Declaration of Maritime Labour Compliance part I and II (MLC and DMLC part I and II) (MLC, 2006/Reg.5.1/ standard A5.1.3);*

*.71 Medical certificates (MLC, 2006/ Reg. 1.2/Standard A1.2 or ILO73);*

or if there are clear grounds for believing that the conditions of the ship or its equipment or its crew do not substantially meet the requirements of the relevant instrument, a more detailed inspection will be carried out on the ship. Detection of clear grounds depends on professional judgement of the PSC officer, affected not only by the PSC officer's awareness and individual knowledge in maritime law and labour law but also by PSC human and financial resources and the port State's political and economic considerations.

The PSC results on working and living conditions were analysed in reports by the following MoU's: the Paris MoU, the Tokyo MoU, the Caribbean MoU, Abuja MoU, the Black Sea MoU, the Indian Ocean MoU and Riyadh MoU as well as of the United States Coast Guard. Deficiencies related to working and living conditions comprised from 7.6 per cent (Abuja MoU 2017, ILO working and living conditions), 9.25 per cent (Tokyo MoU 2018, Convention No. 147 and MLC related deficiencies), 9.34 per cent (Tokyo MoU 2017, Convention No. 147 and MLC related deficiencies) to 21.09 per cent (Black Sea MoU 2017, MLC related deficiencies) and 18.1 per cent (Black Sea MoU 2018, MLC related deficiencies) from total deficiencies. Information on detainable MLC deficiencies and detentions in result of MLC deficiencies is available only from the Black Sea MoU report. There is no uniform approach to reflect the inspection results in relation to the living and working conditions. Some PSC reports refer to the working and living conditions, generally, some refer to the ILO/MLC related issues and some to the MLC related issues. Usually the results in respect of these issues are very general and more detailed commentaries on results are not available in the reports. Accordingly, it is not possible to make a relevant comparison of the results of different PSC regimes in respect of living and working conditions in respect of the MLC, specifically, or in respect of specific MLC issues.

The regime of PSC is to supplement a flag State's control over its ships. However, taking into account financial and political considerations of the port State as well as the fact that PSC, first of all, relies on valid MLC Certificates, it can be said that the primary responsibility for the implementation of the MLC is of the flag State.

Besides the measures introduced by the MLC, seafarers can use for protection of their claims an historic measure – a ship arrest. If the shipowner does not fulfil its obligations in respect of the seafarers, maritime law provides protection for the seafarers' claims through a ship arrest.

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*.72 Table of shipboard working arrangements (MLC, 2006/ Reg.2.3/ standard A2.3, 10 or ILO180/Part II/Art 5.7 a & b and STCW95/A-VIII/1.5);*

*.73 Records of hours of work or rest of seafarers (MLC, 2006/Reg. 2.3/standard A2.3, 10 or ILO180/Part II/Art 8.1 and STCW95/A-VIII/1.5);*

*.74 Certificate or documentary evidence of financial security for repatriation (MLC, 2006/Reg2.5/standard A2.5.2);*

*.75 Certificate or documentary evidence of financial security relating to shipowners liability (MLC, 2006/Reg.4.2/standard A4.2.1);*

A ship arrest is an institute in shipping which is traditionally used for obtaining security and payments for all claims arising from the operation of a ship, including claims of seafarers. Wages and other sums due to seafarers are recognised as maritime claims in accordance with the Arrest Convention, 1952 and the Arrest Convention, 1999 and, accordingly, a ship can be arrested for such claims. Under a ship arrest regulation, a ship can be arrested not only for maritime claims against a person having an ownership link to the ship but also for maritime claims against a bareboat charterer, manager, operator or another person. Of course, the claimant is in the best position when the ship is arrested in respect of the claim against the owner. It could be discussed what is meant by “other liable person than registered owner” in Article 3 (4) of the Arrest Convention, 1952; and different countries can have different approaches to the arrest of a ship when a person other than the owner is liable. In any case, availability of the information about the responsible shipowner and the link between this person and a particular ship is crucial for effective enforcement of a ship arrest.

## **6.2. Recommendations**

### **Promotion of the uniform implementation of the MLC concept of *shipowner***

It was concluded after the analysis of national law that there is no uniformity in the implementation of the MLC concept of *shipowner* in national law. In some countries, this concept has been implemented in line with the MLC; but in other countries, there is derogation from the MLC concept. The global nature of maritime labour requires uniform implementation and enforcement of the MLC concept of *shipowner*. The uniformity, in respect of this, could be reached through amendments in the MLC, in national law and in other legal instruments.

Flag States have the main responsibility and also the main power to ensure proper implementation of the MLC. A Member is required to adopt national laws and regulations specifying the matters to be included in the SEA. Shipping is subject to global competition. In order not to create less favourable conditions for their own ships, flag States are reluctant to adopt stricter national requirements than in other countries. Therefore, in shipping there is a need for uniform regulation and uniform enforcement of it. It could be reached, first of all, through international regulation, as clear and direct as possible. Consequently, as the first measure to improve the situation with the identification of the responsible person in SEA's, the author sees the amendments to the MLC.

Although the MLC definition of “shipowner” is very vague and leads to different interpretations, in the author’s opinion there is no need to amend this definition. Amendments could be made in the recommendatory part of the MLC Code, in Guideline B2.1 – *Seafarers’ employment agreements* (Title 2. Conditions of employment), recommending the following:

1) Each Member should ensure that national law clearly specifies who is the shipowner – the person with final responsibility. And this person could be the owner of the ship, bareboat charterer or ISM Company, but not any third person, like a manning agent, performing some individual tasks in seafarers’ recruitment process.

2) Additionally, each Member should ensure that national law contains provisions on joint and several liability between the owner of the ship and other persons involved in the recruitment and employment of seafarers. These provisions should reflect the principle that there is one final responsible person.

After the amendments in the MLC Code, the implementation of the afore-mentioned recommendations in national law could be promoted through ILO publications as well as through legal instruments of PSC regimes.

### **Regulation of the signing of SEA’s and indication of the final responsible party in SEA’s**

Analysis of national law, national standard forms of SEA’s as well as reports of Member States submitted to the CEACR revealed that Standard A2.1 – *Seafarers’ employment agreements* of the MLC is not always fully implemented in national law. The mentioned relates to paragraph 1 (a) of Standard A2.1, requiring that every seafarer has an original agreement that is signed by the seafarer and the shipowner or a representative of the latter (whether or not the shipowner is considered to be the employer of the seafarer). It is allowed under national law of many countries that the SEA is signed by a third party acting as an employer. National law of some countries does not require the SEA to be signed by the shipowner, nor does it require to enclose evidence on the legal basis according to which the third party is signing the SEA on behalf of the shipowner. Consequently, the SEA does not provide the seafarer with information on the final responsible party.

A standard form of SEA recommended by the MLC guidelines and enclosed in the Appendix to the MLC could be a solution. Guideline B2.1 – *Seafarers’ employment agreements* (Title 2. Conditions of employment) should be amended to state that national law or regulations

should provide that the parties to the SEA use the standard form of SEA set out in the Appendix; and the new Appendix should be added, accordingly, to the MLC.

In order to ensure that a seafarer has clear information on the shipowner, directly responsible to the seafarer for all matters, McConnell offers to introduce two legally enforceable agreements for seafarers: one with the outside, third party employer and one with the shipowner:

*(...) Alternatively an SEA with a shipowner could, for example, set out the ship-related conditions of employment and then provide, much like the incorporation by reference of a collective bargaining agreement as envisaged in the paragraph 2 of Regulation 2.1, that all other terms and conditions are contained in the employment agreement concluded between the seafarer and the outside employer. That agreement would be annexed as a schedule to the SEA (and would be subject to flag and port State inspection). The shipowner would, however, have to make sure that the employment terms in the annexed agreement are consistent with the flag State's national requirements implementing the MLC, 2006 and that there are no gaps in coverage.<sup>929</sup>*

Flag States as main actors in the implementation of the MLC Standards have the main instruments to ensure the full implementation and enforcement of these standards. These instruments are amendments in national law, regulations and guidelines as well as standard forms. Additionally, in a flag State's inspections the necessary requirements could be directly communicated to the management of ships.

The adoption of a uniform standard form for SEA's would improve control of SEA's by PSC. By having different standard forms and different attitudes of flag States on who has to sign the SEA, effective PSC control and uniform enforcement of this MLC standard is not possible.

It was recommended by the Paris MoU on PSC after its Concentrated Inspection Campaign on the MLC:

*2.3 Recommendations Regarding the number and the nature of deficiencies in relation to the seafarer's employment agreement, the industry should be reminded that all the information required by the MLC must be included in the SEA.<sup>930</sup>*

This author has doubts on whether, until now, enough attention has been paid by PSC to the conformity of the SEA to paragraph 1 (a) of the MLC Standard A2.1.

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<sup>929</sup> M. L. McConnell, *supra* note 306, p. 124.

<sup>930</sup> Report of the 2016 Concentrated Inspection Campaign (CIC) on Maritime Labour Convention, 2006, *supra* note 470, p. 4.

## **Regulation of the insurance certificate and termination of it**

Reports on abandonment cases show that there are insufficient mechanisms in place to ensure that vessels cannot trade without valid abandonment insurance. Relationships between all involved parties – the flag State, shipowner, insurer and other entities, are extremely varied (see Chapter 5.1.3.). Also, in cases with valid insurance, wages are not always paid fully. It has been concluded that flag States fail to hold owners responsible for sailing without valid insurance.

Regulation of the MLC in respect of flag States' obligations to ensure a validity of financial security could be more detailed. Financial security can expire at the end of its validity period or before end of its validity, if a notice on termination of financial security is submitted to the flag State at least 30 days beforehand. In respect of financial security for contractual claims it is also required to inform seafarers on the termination of the financial security before its term of validity. That is all MLC regulation on the validity of financial security. At the moment, the MLC is missing provisions requiring the flag State to exercise effective control over the validity of financial security. In the author's view, in order to make flag State control more effective the following provisions need to be added to Standard A2.5.2 – *Financial security* and to Standard A4.2.1 – *Shipowners' validity* of the MLC:

1) After the receipt of prior notification from the financial security provider on termination of the financial security, as requested by the MLC, a flag State should request from the shipowner to inform on new financial security what will be in force after termination of the previous one;

2) The same should be requested to the shipowner in respect of the financial security that is going to expire according to the term of its validity. At least 30 days before the end of the period of validity of the financial security, the shipowner should submit to the flag State documents evidencing that there will be valid financial security after the expiration of the previous one;

3) A Flag State should not passively wait for information from the insurance provider or shipowner but act proactively and before the end of financial security, according to its term of validity or after prior notification, by requesting from the shipowner to inform the flag State on how the MLC requirement for financial security will be provided for after expiration of the previous financial security;

4) Information on the termination of financial security together with information on the new one, in all cases, should also be submitted to seafarers.

To strengthen flag States' obligation to check a financial security provider's financial standing, it is recommended to amend the *Guidelines for accepting insurance companies, financial security providers and the International Group of Protection and Indemnity Associations (P & I Clubs)*, approved by the IMO's Legal Committee in its 101st session.<sup>931</sup> The Guidelines contain criteria for accepting Blue Cards or similar documentation from insurance companies to States Parties to a number of IMO treaties. The guidance relates to insurance certificates in relation to the CLC, BUNKER, Nairobi WRC and the International Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances by Sea, 1996, as amended by the Protocol of 2010 to the Convention (the 2010 HNS Convention). The MLC is not listed among these conventions. The guidelines contain a list of criteria that may be used for accepting Blue Cards or similar documentation in order to check a company's financial standing. Taking into account problems with validity of insurance cover for financial security required by the MLC, these guidelines should be amended to also reference the MLC.

### **Regulation in respect of a SRPS system of protection**

Paragraph 5 (c) (vi) of Standard A1.4 of the MLC contains a mechanism which could be an important measure for seafarers to get compensated for a shipowner's failure to meet its obligations – the obligation of SRPS to establish a system of protection, by way of insurance or other appropriate measure, to compensate seafarers for monetary loss they may incur as a result of failure of the SRPS or the relevant shipowner to meet its obligations to them. However, the methods of national implementation of this measure as well as CEACR comments show that: it is still not clear what would be the correct measure to implement this requirement. There are quite different approaches to implementation of this requirement at the moment. If seafarers cannot reach the shipowner, who failed to fulfil its obligations, they have rights to require compensation from SRPS on the basis of Standard A1.4, paragraph 5(c)(vi) of the MLC. But the responsibility according to this standard could be disproportionate for SRPS, manning agents recruiting seafarers for a foreign shipowner and SRPS may not financially be able to cover the shipowner's liability. Therefore, more clarity and uniformity in respect of the implementation of this standard would be necessary. Standard A1.4, paragraph 5(c)(vi) of the MLC should be amended to state that the SRPS system of protection covers only SRPS failures, not the shipowners'. Another option would be to

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<sup>931</sup> *Guidelines for accepting insurance companies, financial security providers and the International Group of Protection and Indemnity Associations (P & I Clubs)*, supra note 605.

make amendments to Guideline B1.4 – *Recruitment and placement* and to clarify what could be the measures for implementation of this standard to reach its uniform implementation.

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## Annexes

### A. Annex MLC Amendments of 2014

#### **TEXT OF THE AMENDMENTS OF 2014 TO THE MARITIME LABOUR CONVENTION, 2006**

**Amendments to the Code implementing Regulations 2.5 and 4.2 and appendices of the Maritime Labour Convention, 2006 (MLC, 2006), adopted by the Special Tripartite Committee on 11 April 2014**

#### **I. Amendments to the Code implementing Regulation 2.5 – Repatriation of the MLC, 2006 (and appendices)**

##### **A. Amendments relating to Standard A2.5**

In the present heading, “Standard A2.5 – Repatriation”, replace “A2.5” by “A2.5.1”.

Following paragraph 9 of the present Standard A2.5, add the following heading and text:

##### *Standard A2.5.2 – Financial security*

1. In implementation of Regulation 2.5, paragraph 2, this Standard establishes requirements to ensure the provision of an expeditious and effective financial security system to assist seafarers in the event of their abandonment.

2. For the purposes of this Standard, a seafarer shall be deemed to have been abandoned where, in violation of the requirements of this Convention or the terms of the seafarers’ employment agreement, the shipowner:

- (a) fails to cover the cost of the seafarer’s repatriation; or
- (b) has left the seafarer without the necessary maintenance and support; or
- (c) has otherwise unilaterally severed their ties with the seafarer including failure to pay contractual wages for a period of at least two months.

3. Each Member shall ensure that a financial security system meeting the requirements of this Standard is in place for ships flying its flag. The financial security system may be in the form of a social security scheme or insurance or a national fund or other similar arrangements. Its form shall be determined by the Member after consultation with the shipowners’ and seafarers’ organizations concerned.

4. The financial security system shall provide direct access, sufficient coverage and expedited financial assistance, in accordance with this Standard, to any abandoned seafarer on a ship flying the flag of the Member.

5. For the purposes of paragraph 2(b) of this Standard, necessary maintenance and support of seafarers shall include: adequate food, accommodation, drinking water supplies, essential fuel for survival on board the ship and necessary medical care.

6. Each Member shall require that ships that fly its flag, and to which paragraph 1 or 2 of Regulation 5.1.3 applies, carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

7. The certificate or other documentary evidence of financial security shall contain the information required in Appendix A2-I. It shall be in English or accompanied by an English translation.

8. Assistance provided by the financial security system shall be granted promptly upon request made by the seafarer or the seafarer's nominated representative and supported by the necessary justification of entitlement in accordance with paragraph 2 above.

9. Having regard to Regulations 2.2 and 2.5, assistance provided by the financial security system shall be sufficient to cover the following:

- (a) outstanding wages and other entitlements due from the shipowner to the seafarer under their employment agreement, the relevant collective bargaining agreement or the national law of the flag State, limited to four months of any such outstanding wages and four months of any such outstanding entitlements;
- (b) all expenses reasonably incurred by the seafarer, including the cost of repatriation referred to in paragraph 10; and
- (c) the essential needs of the seafarer including such items as: adequate food, clothing where necessary, accommodation, drinking water supplies, essential fuel for survival on board the ship, necessary medical care and any other reasonable costs or charges from the act or omission constituting the abandonment until the seafarer's arrival at home.

10. The cost of repatriation shall cover travel by appropriate and expeditious means, normally by air, and include provision for food and accommodation of the seafarer from the time of leaving the ship until arrival at the seafarer's home, necessary medical care, passage and transport of personal effects and any other reasonable costs or charges arising from the abandonment.

11. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.

12. If the provider of insurance or other financial security has made any payment to any seafarer in accordance with this Standard, such provider shall, up to the amount it has paid and in accordance with the applicable law, acquire by subrogation, assignment or otherwise, the rights which the seafarer would have enjoyed.

13. Nothing in this Standard shall prejudice any right of recourse of the insurer or provider of financial security against third parties.

14. The provisions in this Standard are not intended to be exclusive or to prejudice any other rights, claims or remedies that may also be available to compensate seafarers who are abandoned. National laws and regulations may provide that any amounts payable under this Standard can be offset against amounts received from other sources arising from any rights, claims or remedies that may be the subject of compensation under the present Standard.

## B. Amendments relating to Guideline B2.5

At the end of the present Guideline B2.5, add the following heading and text:

### Guideline B2.5.3 – Financial security

1. In implementation of paragraph 8 of Standard A2.5.2, if time is needed to check the validity of certain aspects of the request of the seafarer or the seafarer's nominated representative, this should not prevent the seafarer from immediately receiving such part of the assistance requested as is recognized as justified.

C. Amendment to include a new appendix

Before Appendix A5-I, add the following appendix:

**APPENDIX A2-I**

**Evidence of financial security under Regulation 2.5, paragraph 2**

The certificate or other documentary evidence referred to in Standard A2.5.2, paragraph 7, shall include the following information:

- (a) name of the ship;
- (b) port of registry of the ship;
- (c) call sign of the ship;
- (d) IMO number of the ship;
- (e) name and address of the provider or providers of the financial security;
- (f) contact details of the persons or entity responsible for handling seafarers' requests for relief;
- (g) name of the shipowner;
- (h) period of validity of the financial security; and
- (i) an attestation from the financial security provider that the financial security meets the requirements of Standard A2.5.2.

D. Amendments relating to Appendices A5-I, A5-II and A5-III

At the end of Appendix A5-I, add the following item:

Financial security for repatriation

In Appendix A5-II, after item 14 under the heading Declaration of Maritime Labour Compliance – Part I, add the following item:

- 15. Financial security for repatriation (Regulation 2.5)

In Appendix A5-II, after item 14 under the heading Declaration of Maritime Labour Compliance – Part II, add the following item:

- 15. Financial security for repatriation (Regulation 2.5)

At the end of Appendix A5-III, add the following area:

Financial security for repatriation

**II. Amendments to the Code implementing Regulation 4.2 – Shipowners' liability of the MLC, 2006 (and appendices)**

A. Amendments relating to Standard A4.2

In the present heading, "Standard A4.2 – Shipowners' liability", replace "A4.2" by "A4.2.1".

Following paragraph 7 of the present Standard A4.2, add the following text:

8. National laws and regulations shall provide that the system of financial security to assure compensation as provided by paragraph 1(b) of this Standard for contractual claims, as defined in Standard A4.2.2, meet the following minimum requirements:

- (a) the contractual compensation, where set out in the seafarer's employment agreement and without prejudice to subparagraph (c) of this paragraph, shall be paid in full and without delay;

- (b) there shall be no pressure to accept a payment less than the contractual amount;
- (c) where the nature of the long-term disability of a seafarer makes it difficult to assess the full compensation to which the seafarer may be entitled, an interim payment or payments shall be made to the seafarer so as to avoid undue hardship;
- (d) in accordance with Regulation 4.2, paragraph 2, the seafarer shall receive payment without prejudice to other legal rights, but such payment may be offset by the shipowner against any damages resulting from any other claim made by the seafarer against the shipowner and arising from the same incident; and
- (e) the claim for contractual compensation may be brought directly by the seafarer concerned, or their next of kin, or a representative of the seafarer or designated beneficiary.

9. National laws and regulations shall ensure that seafarers receive prior notification if a shipowner's financial security is to be cancelled or terminated.

10. National laws and regulations shall ensure that the competent authority of the flag State is notified by the provider of the financial security if a shipowner's financial security is cancelled or terminated.

11. Each Member shall require that ships that fly its flag carry on board a certificate or other documentary evidence of financial security issued by the financial security provider. A copy shall be posted in a conspicuous place on board where it is available to the seafarers. Where more than one financial security provider provides cover, the document provided by each provider shall be carried on board.

12. The financial security shall not cease before the end of the period of validity of the financial security unless the financial security provider has given prior notification of at least 30 days to the competent authority of the flag State.

13. The financial security shall provide for the payment of all contractual claims covered by it which arise during the period for which the document is valid.

14. The certificate or other documentary evidence of financial security shall contain the information required in Appendix A4-I. It shall be in English or accompanied by an English translation.

Add the following heading and text following the present Standard A4.2:

*Standard A4.2.2 – Treatment of contractual claims*

1. For the purposes of Standard A4.2.1, paragraph 8, and the present Standard, the term "contractual claim" means any claim which relates to 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 collective agreement.

2. The system of financial security, as provided for in Standard A4.2.1, paragraph 1(b), may be in the form of a social security scheme or insurance or fund or other similar arrangements. Its form shall be determined by the Member after consultation with the shipowners' and seafarers' organizations concerned.

3. National laws and regulations shall ensure that effective arrangements are in place to receive, deal with and impartially settle contractual claims relating to compensation referred to in Standard A4.2.1, paragraph 8, through expeditious and fair procedures.

**B. Amendments relating to Guideline B4.2**

In the present heading, “Guideline B4.2 – Shipowners’ liability”, replace “B4.2” by “B4.2.1”.

In paragraph 1 of the present Guideline B4.2, replace “Standard A4.2” by “Standard A4.2.1”.

Following paragraph 3 of the present Guideline B4.2, add the following heading and text:

**Guideline B4.2.2 – Treatment of contractual claims**

1. National laws or regulations should provide that the parties to the payment of a contractual claim may use the Model Receipt and Release Form set out in Appendix B4-I.

**C. Amendment to include new appendices**

After Appendix A2-I, add the following appendix:

**APPENDIX A4-I**

**Evidence of financial security under Regulation 4.2**

The certificate or other documentary evidence of financial security required under Standard A4.2.1, paragraph 14, shall include the following information:

- (a) name of the ship;
- (b) port of registry of the ship;
- (c) call sign of the ship;
- (d) IMO number of the ship;
- (e) name and address of the provider or providers of the financial security;
- (f) contact details of the persons or entity responsible for handling seafarers’ contractual claims;
- (g) name of the shipowner;
- (h) period of validity of the financial security; and
- (i) an attestation from the financial security provider that the financial security meets the requirements of Standard A4.2.1.

After Appendix A4-I, add the following appendix:

**APPENDIX B4-I**

**Model Receipt and Release Form**  
referred to in Guideline B4.2.2

Ship (name, port of registry and IMO number): .....

Incident (date and place): .....

Seafarer/legal heir and/or dependant: .....

Shipowner: .....

I, [Seafarer] [Seafarer’s legal heir and/or dependant]\* hereby acknowledge receipt of the sum of [currency and amount] in satisfaction of the Shipowner’s obligation to pay contractual compensation for personal injury and/or death under the terms and conditions of [my] [the Seafarer’s]\* employment and I hereby release the Shipowner from their obligations under the said terms and conditions.

The payment is made without admission of liability of any claims and is accepted without prejudice to [my] [the Seafarer's legal heir and/or dependant's]\* right to pursue any claim at law in respect of negligence, tort, breach of statutory duty or any other legal redress available and arising out of the above incident.

Dated:.....

Seafarer/legal heir and/or dependant: .....

Signed:.....

*For acknowledgement:*

Shipowner/Shipowner representative:

Signed:.....

Financial security provider:

Signed:.....

\_\_\_\_\_  
\* Delete as appropriate.

**D. Amendments relating to Appendices A5-I, A5-II and A5-III**

At the end of Appendix A5-I, add the following item:

Financial security relating to shipowners' liability

In Appendix A5-II, as the last item under the heading Declaration of Maritime Labour Compliance – Part I, add the following item:

16. Financial security relating to shipowners' liability (Regulation 4.2)

In Appendix A5-II, as the last item under the heading Declaration of Maritime Labour Compliance – Part II, add the following item:

16. Financial security relating to shipowners' liability (Regulation 4.2)

At the end of Appendix A5-III, add the following area:

Financial security relating to shipowners' liability

The foregoing is the authentic text of the Amendments duly approved by the General Conference of the International Labour Organization during its One hundred and third Session which was held at Geneva and declared closed the twelfth day of June 2014.

IN FAITH WHEREOF we have appended our signatures this twelfth day of June 2014.

**B. Annex Maritime Labour Certificate (Appendix A5-II of the MLC)**

**APPENDIX A5-II**

**Maritime Labour Certificate**

*(Note: This Certificate shall have a Declaration of Maritime Labour Compliance attached)*

Issued under the provisions of Article V and Title 5 of the  
Maritime Labour Convention, 2006  
(referred to below as “the Convention”)  
under the authority of the Government of:

.....  
(full designation of the State whose flag the ship is entitled to fly)

by .....  
(full designation and address of the competent authority or recognized organization  
duly authorized under the provisions of the Convention)

Particulars of the ship

Name of ship: .....

Distinctive number or letters: .....

Port of registry: .....

Date of registry: .....

Gross tonnage:<sup>1</sup> .....

IMO number: .....

Type of ship: .....

Name and address of the shipowner:<sup>2</sup> .....

.....

.....

<sup>1</sup> For ships covered by the tonnage measurement interim scheme adopted by the IMO, the gross tonnage is that which is included in the REMARKS column of the International Tonnage Certificate (1969). See Article II(1)(c) of the Convention.

<sup>2</sup> *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 organizations or persons fulfil certain of the duties or responsibilities on behalf of the shipowner. See Article II(1)(j) of the Convention.

This is to certify:

1. That this ship has been inspected and verified to be in compliance with the requirements of the Convention, and the provisions of the attached Declaration of Maritime Labour Compliance.

2. That the seafarers' working and living conditions specified in Appendix A5-I of the Convention were found to correspond to the abovementioned country's national requirements implementing the Convention. These national requirements are summarized in the Declaration of Maritime Labour Compliance, Part I.

This Certificate is valid until ..... subject to inspections in accordance with Standards A5.1.3 and A5.1.4 of the Convention.

This Certificate is valid only when the Declaration of Maritime Labour Compliance issued

at ..... on ..... is attached.

Completion date of the inspection on which this Certificate is based was .....

Issued at ..... on .....

Signature of the duly authorized official issuing the Certificate

(Seal or stamp of issuing authority, as appropriate)

*Endorsements for mandatory intermediate inspection and, if required, any additional inspection*

This is to certify that the ship was inspected in accordance with Standards A5.1.3 and A5.1.4 of the Convention and that the seafarers' working and living conditions specified in Appendix A5-I of the Convention were found to correspond to the abovementioned country's national requirements implementing the Convention.

*Intermediate inspection:*

(to be completed between the second and third anniversary dates)

Signed: .....

(Signature of authorized official)

.....

Place: .....

Date: .....

(Seal or stamp of the authority, as appropriate)

*Additional endorsements (if required)*

This is to certify that the ship was the subject of an additional inspection for the purpose of verifying that the ship continued to be in compliance with the national requirements implementing the Convention, as required by Standard A3.1, paragraph 3, of the Convention (re-registration or substantial alteration of accommodation) or for other reasons.

*Additional inspection:*  
(if required)

Signed: .....  
(Signature of authorized official)

Place: .....

Date: .....  
(Seal or stamp of the authority,  
as appropriate)

*Additional inspection:*  
(if required)

Signed: .....  
(Signature of authorized official)

Place: .....

Date: .....  
(Seal or stamp of the authority,  
as appropriate)

*Additional inspection:*  
(if required)

Signed: .....  
(Signature of authorized official)

Place: .....

Date: .....  
(Seal or stamp of the authority,  
as appropriate)

*Extension after renewal inspection (if required)*

This is to certify that, following a renewal inspection, the ship was found to continue to be in compliance with national laws and regulations or other measures implementing the requirements of the Convention, and that the present certificate is hereby extended, in accordance with paragraph 4 of Standard A5.1.3, until .....  
(not more than five months after the expiry date of the existing certificate) to allow for the new certificate to be issued to and made available on board the ship.

Completion date of the renewal inspection on which this extension is based was:

.....

Signed: .....  
(Signature of authorized official)

Place: .....

Date: .....  
(Seal or stamp of the authority,  
as appropriate)

**Maritime Labour Convention, 2006**

Declaration of Maritime Labour Compliance – Part I

*(Note: This Declaration must be attached to the ship's Maritime Labour Certificate)*

Issued under the authority of: ..... *(insert name of competent authority as defined in Article II, paragraph 1(a), of the Convention)*

With respect to the provisions of the Maritime Labour Convention, 2006, the following referenced ship:

| Name of ship | IMO number | Gross tonnage |
|--------------|------------|---------------|
|              |            |               |

is maintained in accordance with Standard A5.1.3 of the Convention.

The undersigned declares, on behalf of the abovementioned competent authority, that:

- (a) the provisions of the Maritime Labour Convention are fully embodied in the national requirements referred to below;
- (b) these national requirements are contained in the national provisions referenced below; explanations concerning the content of those provisions are provided where necessary;
- (c) the details of any substantial equivalencies under Article VI, paragraphs 3 and 4, are provided <under the corresponding national requirement listed below> <in the section provided for this purpose below> *(strike out the statement which is not applicable)*;
- (d) any exemptions granted by the competent authority in accordance with Title 3 are clearly indicated in the section provided for this purpose below; and
- (e) any ship-type specific requirements under national legislation are also referenced under the requirements concerned.

- 1. Minimum age (Regulation 1.1).....
- 2. Medical certification (Regulation 1.2).....
- 3. Qualifications of seafarers (Regulation 1.3).....
- 4. Seafarers' employment agreements (Regulation 2.1).....
- 5. Use of any licensed or certified or regulated private recruitment and placement service (Regulation 1.4).....
- 6. Hours of work or rest (Regulation 2.3).....
- 7. Manning levels for the ship (Regulation 2.7).....
- 8. Accommodation (Regulation 3.1).....
- 9. On-board recreational facilities (Regulation 3.1).....
- 10. Food and catering (Regulation 3.2).....
- 11. Health and safety and accident prevention (Regulation 4.3).....
- 12. On-board medical care (Regulation 4.1).....

- 13. On-board complaint procedures (Regulation 5.1.5) .....
- 14. Payment of wages (Regulation 2.2) .....
- 15. Financial security for repatriation (Regulation 2.5) .....
- 16. Financial security relating to shipowners' liability (Regulation 4.2) .....

Name: .....

Title: .....

Signature: .....

Place: .....

Date: .....

(Seal or stamp of the authority,  
as appropriate)

Substantial equivalencies

*(Note: Strike out the statement which is not applicable)*

The following substantial equivalencies, as provided under Article VI, paragraphs 3 and 4, of the Convention, except where stated above, are noted *(insert description if applicable)*:

.....  
.....

No equivalency has been granted.

Name: .....

Title: .....

Signature: .....

Place: .....

Date: .....

(Seal or stamp of the authority,  
as appropriate)

Exemptions

*(Note: Strike out the statement which is not applicable)*

The following exemptions granted by the competent authority as provided in Title 3 of the Convention are noted:

.....  
.....

No exemption has been granted.

Name: .....

Title: .....

Signature: .....

Place: .....

Date: .....

(Seal or stamp of the authority,  
as appropriate)

## Declaration of Maritime Labour Compliance – Part II

### *Measures adopted to ensure ongoing compliance between inspections*

The following measures have been drawn up by the shipowner, named in the Maritime Labour Certificate to which this Declaration is attached, to ensure ongoing compliance between inspections:

*(State below the measures drawn up to ensure compliance with each of the items in Part I)*

1. Minimum age (Regulation 1.1)   
.....
2. Medical certification (Regulation 1.2)   
.....
3. Qualifications of seafarers (Regulation 1.3)   
.....
4. Seafarers' employment agreements (Regulation 2.1)   
.....
5. Use of any licensed or certified or regulated private recruitment and placement service (Regulation 1.4)   
.....
6. Hours of work or rest (Regulation 2.3)   
.....
7. Manning levels for the ship (Regulation 2.7)   
.....
8. Accommodation (Regulation 3.1)   
.....
9. On-board recreational facilities (Regulation 3.1)   
.....
10. Food and catering (Regulation 3.2)   
.....
11. Health and safety and accident prevention (Regulation 4.3)   
.....
12. On-board medical care (Regulation 4.1)   
.....
13. On-board complaint procedures (Regulation 5.1.5)   
.....
14. Payment of wages (Regulation 2.2)   
.....

15. Financial security for repatriation (Regulation 2.5)
- .....
16. Financial security relating to shipowners' liability (Regulation 4.2)
- .....

I hereby certify that the above measures have been drawn up to ensure ongoing compliance, between inspections, with the requirements listed in Part I.

Name of shipowner:<sup>1</sup> .....

.....

Company address: .....

.....

Name of the authorized signatory:

.....

Title: .....

Signature of the authorized signatory:

.....

Date: .....

(Stamp or seal of the shipowner<sup>1</sup>)

The above measures have been reviewed by (*insert name of competent authority or duly recognized organization*) and, following inspection of the ship, have been determined as meeting the purposes set out under Standard A5.1.3, paragraph 10(b), regarding measures to ensure initial and ongoing compliance with the requirements set out in Part I of this Declaration.

Name: .....

Title: .....

Address: .....

.....

.....

Signature: .....

Place: .....

Date: .....

(Seal or stamp of the authority,  
as appropriate)

<sup>1</sup> *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 organizations or persons fulfil certain of the duties or responsibilities on behalf of the shipowner. See Article II(1)(j) of the Convention.

**Interim Maritime Labour Certificate**

Issued under the provisions of Article V and Title 5 of the  
Maritime Labour Convention, 2006  
(referred to below as "the Convention")  
under the authority of the Government of:

.....  
(full designation of the State whose flag the ship is entitled to fly)

by .....  
(full designation and address of the competent authority or recognized organization  
duly authorized under the provisions of the Convention)

**Particulars of the ship**

Name of ship: .....

Distinctive number or letters: .....

Port of registry: .....

Date of registry: .....

Gross tonnage:<sup>1</sup> .....

IMO number: .....

Type of ship: .....

Name and address of the shipowner:<sup>2</sup> .....

.....

This is to certify, for the purposes of Standard A5.1.3, paragraph 7, of the Convention, that:

- (a) this ship has been inspected, as far as reasonable and practicable, for the matters listed in Appendix A5-I to the Convention, taking into account verification of items under (b), (c) and (d) below;
- (b) the shipowner has demonstrated to the competent authority or recognized organization that the ship has adequate procedures to comply with the Convention;
- (c) the master is familiar with the requirements of the Convention and the responsibilities for implementation; and
- (d) relevant information has been submitted to the competent authority or recognized organization to produce a Declaration of Maritime Labour Compliance.

<sup>1</sup> For ships covered by the tonnage measurement interim scheme adopted by the IMO, the gross tonnage is that which is included in the REMARKS column of the International Tonnage Certificate (1969). See Article II(1)(c) of the Convention.

<sup>2</sup> *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 organizations or persons fulfil certain of the duties or responsibilities on behalf of the shipowner. See Article II(1)(j) of the Convention.

This Certificate is valid until ..... subject to inspections in accordance with Standards A5.1.3 and A5.1.4.

Completion date of the inspection referred to under (a) above was .....

Issued at ..... on .....

Signature of the duly authorized official  
issuing the interim certificate: .....

(Seal or stamp of issuing authority, as appropriate)

## **C. Annex List of all instruments in respect of seafarers' labour adopted by ILO**

### **18. Seafarers**

#### **18.1. General provisions**

##### *Up-to-date instrument*

C147 - Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)

P147 - Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976

R155 - Merchant Shipping (Improvement of Standards) Recommendation, 1976 (No. 155)

C185 - Seafarers' Identity Documents Convention (Revised), 2003, as amended (No. 185)

MLC, 2006 - Maritime Labour Convention, 2006 (MLC, 2006)

##### *Instrument with interim status*

R009 - National Seamen's Codes Recommendation, 1920 (No. 9)

##### *Outdated instrument*

C108 - Seafarers' Identity Documents Convention, 1958 (No. 108)

R107 - Seafarers' Engagement (Foreign Vessels) Recommendation, 1958 (No. 107)

#### **18.2. Protection of children and young persons**

##### *Outdated instrument*

C058 - Minimum Age (Sea) Convention (Revised), 1936 (No. 58)

C016 - Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16)

C007 - Minimum Age (Sea) Convention, 1920 (No. 7)

R153 - Protection of Young Seafarers Recommendation, 1976 (No. 153)

#### **18.3. Vocational guidance and training**

##### *Outdated instrument*

R137 - Vocational Training (Seafarers) Recommendation, 1970 (No. 137)

##### *Replaced Recommendation*

R077 - Vocational Training (Seafarers) Recommendation, 1946 (No. 77)

#### **18.4. Access to employment**

##### *Instrument to be revised*

C069 - Certification of Ships' Cooks Convention, 1946 (No. 69)

#### *Outdated instrument*

R139 - Employment of Seafarers (Technical Developments) Recommendation, 1970 (No. 139)

C009 - Placing of Seamen Convention, 1920 (No. 9)

C053 - Officers' Competency Certificates Convention, 1936 (No. 53)

C179 - Recruitment and Placement of Seafarers Convention, 1996 (No. 179)

C074 - Certification of Able Seamen Convention, 1946 (No. 74)

R186 - Recruitment and Placement of Seafarers Recommendation, 1996 (No. 186)

### **18.5. General conditions of employment**

#### *Outdated instrument*

R027 - Repatriation (Ship Masters and Apprentices) Recommendation, 1926 (No. 27)

C146 - Seafarers' Annual Leave with Pay Convention, 1976 (No. 146)

C022 - Seamen's Articles of Agreement Convention, 1926 (No. 22)

C023 - Repatriation of Seamen Convention, 1926 (No. 23)

C091 - Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91)

C057 - Hours of Work and Manning (Sea) Convention, 1936 (No. 57)

C166 - Repatriation of Seafarers Convention (Revised), 1987 (No. 166)

R049 - Hours of Work and Manning (Sea) Recommendation, 1936 (No. 49)

R174 - Repatriation of Seafarers Recommendation, 1987 (No. 174)

C076 - Wages, Hours of Work and Manning (Sea) Convention, 1946 (No. 76)

C180 - Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)

C093 - Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949 (No. 93)

R187 - Seafarers' Wages, Hours of Work and the Manning of Ships Recommendation, 1996 (No. 187)

C109 - Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958 (No. 109)

C054 - Holidays with Pay (Sea) Convention, 1936 (No. 54)

C072 - Paid Vacations (Seafarers) Convention, 1946 (No. 72)

#### *Replaced Recommendation*

R109 - Wages, Hours of Work and Manning (Sea) Recommendation, 1958 (No. 109)

### **18.6. Safety, health and welfare**

#### *Up-to-date instrument*

C163 - Seafarers' Welfare Convention, 1987 (No. 163)

R173 - Seafarers' Welfare Recommendation, 1987 (No. 173)

C164 - Health Protection and Medical Care (Seafarers) Convention, 1987 (No. 164)

#### *Instrument with interim status*

C092 - Accommodation of Crews Convention (Revised), 1949 (No. 92)  
C133 - Accommodation of Crews (Supplementary Provisions) Convention, 1970 (No. 133)  
R140 - Crew Accommodation (Air Conditioning) Recommendation, 1970 (No. 140)  
R141 - Crew Accommodation (Noise Control) Recommendation, 1970 (No. 141)  
R108 - Social Conditions and Safety (Seafarers) Recommendation, 1958 (No. 108)

#### *Request for information*

R142 - Prevention of Accidents (Seafarers) Recommendation, 1970 (No. 142)  
R078 - Bedding, Mess Utensils and Miscellaneous Provisions (Ships' Crews) Recommendation, 1946 (No. 78)

#### *Instrument to be revised*

C068 - Food and Catering (Ships' Crews) Convention, 1946 (No. 68)  
C134 - Prevention of Accidents (Seafarers) Convention, 1970 (No. 134)  
R076 - Seafarers (Medical Care for Dependants) Recommendation, 1946 (No. 76)

#### *Outdated instrument*

C075 - Accommodation of Crews Convention, 1946 (No. 75)  
C073 - Medical Examination (Seafarers) Convention, 1946 (No. 73)  
R048 - Seamen's Welfare in Ports Recommendation, 1936 (No. 48)  
R105 - Ships' Medicine Chests Recommendation, 1958 (No. 105)  
R106 - Medical Advice at Sea Recommendation, 1958 (No. 106)  
R138 - Seafarers' Welfare Recommendation, 1970 (No. 138)

### **18.7. Security of employment**

#### *Outdated instrument*

C145 - Continuity of Employment (Seafarers) Convention, 1976 (No. 145)  
R154 - Continuity of Employment (Seafarers) Recommendation, 1976 (No. 154)

### **18.8. Social security**

#### *Up-to-date instrument*

C165 - Social Security (Seafarers) Convention (Revised), 1987 (No. 165)

#### *Instrument to be revised*

R010 - Unemployment Insurance (Seamen) Recommendation, 1920 (No. 10)  
C055 - Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55)  
C071 - Seafarers' Pensions Convention, 1946 (No. 71)  
R075 - Seafarers' Social Security (Agreements) Recommendation, 1946 (No. 75)

*Outdated instrument*

C056 - Sickness Insurance (Sea) Convention, 1936 (No. 56)

C008 - Unemployment Indemnity (Shipwreck) Convention, 1920 (No. 8)

C070 - Social Security (Seafarers) Convention, 1946 (No. 70)

**18.9. Inspections**

*Up-to-date instrument*

C178 - Labour Inspection (Seafarers) Convention, 1996 (No. 178)

R185 - Labour Inspection (Seafarers) Recommendation, 1996 (No. 185)

*Replaced Recommendation*

R028 - Labour Inspection (Seamen) Recommendation, 1926 (No. 28)

**D. Annex BIMCO Recommended Additional MLC Clauses for BIMCO contracts<sup>932</sup>**

**BIMCO MLC Clause for SHIPMAN 2009**

For the purposes of this Clause:

“MLC” means the International Labour organization (ILO) Maritime Labour Convention (MLC 2006) and any amendment thereto or substitution thereof.

“Shipowner” shall mean the party named as “shipowner” on the Maritime Labour Certificate for the Vessel.

- (a) Subject to Clause 3 (Authority of the Managers), the Managers shall, to the extent of their Management Services, assume the Shipowner’s duties and responsibilities imposed by the MLC for the Vessel, on behalf of the Shipowner.
- (b) The Owners shall ensure compliance with the MLC in respect of any crew members supplied by them or on their behalf.
- (c) The Owners shall procure, whether by instructing the Managers under Clause 7 (Insurance Arrangements) or otherwise, insurance cover or financial security to satisfy the Shipowner’s financial security obligations under the MLC.

**BIMCO MLC Clause for SHIPMAN 98**

For the purposes of this Clause:

“MLC” means the International Labour organization (ILO) Maritime Labour Convention (MLC 2006) and any amendment thereto or substitution thereof.

“Shipowner” shall mean the party named as “shipowner” on the Maritime Labour Certificate for the Vessel.

- (a) Subject to Clause 3 (Basis of Agreement), the Managers shall, to the extent of their Management Services, assume the Shipowner’s duties and responsibilities imposed by the MLC for the Vessel, on behalf of the Shipowner.
- (b) The Owners shall ensure compliance with the MLC in respect of any crew members supplied by them or on their behalf.

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<sup>932</sup> Recommended Additional MLC 2006 Clauses for BIMCO Contracts, BIMCO Special Circular No. 2 – 10 June 2013.

- (c) The Owners shall procure, whether by instructing the Managers under Clause 6 (Insurance Policies) or otherwise, insurance cover or financial security to satisfy the Shipowner's financial security obligations under the MLC.

#### **BIMCO MLC Clause for CREWMAN A 2009/CREWMAN B 2009**

For the purposes of this Clause:

“MLC” means the International Labour organization (ILO) Maritime Labour Convention (MLC 2006) and any amendment thereto or substitution thereof.

“Shipowner” shall mean the party named as “shipowner” on the Maritime Labour Certificate for the Vessel.

- (a) The Crew Managers shall, to the extent of their Crew Management Services, ensure compliance with the MLC, on behalf of the Shipowner, in respect of the Crew supplied by the Crew Managers.
- (b) The Owners shall procure, under Clause 8 (Insurance Policies) or otherwise, insurance cover or financial security to satisfy the Shipowner's financial security obligations under the MLC.

#### **BIMCO MLC Clause for CREWMAN A/CREWMAN B 1999**

For the purposes of this Clause:

“MLC” means the International Labour organization (ILO) Maritime Labour Convention (MLC 2006) and any amendment thereto or substitution thereof.

“Shipowner” shall mean the party named as “shipowner” on the Maritime Labour Certificate for the Vessel.

- (a) The Crew Managers shall, to the extent of their Crew Management Services, ensure compliance with the MLC, on behalf of the Shipowner, in respect of the Crew supplied by the Crew Managers.
- (b) The Owners shall procure, under Clause 4 (Crew Insurance Arrangements) or otherwise, insurance cover or financial security to satisfy the Shipowner's financial security obligations under the MLC.

#### **BIMCO MLC 2006 Clause for SUPPLYTIME 2005**

For the purposes of this Clause:

“MLC” means the International Labour organization (ILO) Maritime Labour Convention (MLC 2006) and any amendment thereto or substitution thereof.

“Charterers' Personnel” shall mean any employees, directors, officers, servants, agents or invitees of each of the Charterers and their contractors, sub-contractors of any tier, co-venturers and customers (having a contractual

relationship with the Charterers, always with respect to the job or project on which the Vessel is employed) and of each of their parent, affiliated, related and subsidiary companies, who are on board the Vessel;

- (a) The Owners shall provide the Charterers with a copy of Part I of the Declaration of Maritime Labour Compliance for the Vessel and the Charterers shall be responsible for ensuring compliance with the following requirements of MLC as applicable to the Vessel and as they may apply to the Charterers' Personnel:
  - (i) Minimum age;
  - (ii) Medical certificate;
  - (iii) Training and qualifications; (iv) Recruitment and placement;
  - (v) Employment agreements;
  - (vi) Wages;
  - (vii) Hours of work and rest;
  - (viii) Entitlement to leave;
  - (ix) Repatriation;
  - (x) Compensation for the Vessel's loss or foundering;
  - (xi) Liability for sickness, injury and death;
  - (xii) Health and safety protection and accident prevention, to the extent that these are under the Charterers' control.
- (b) Prior to any Charterers' Personnel boarding the Vessel and upon Owners' request at any time thereafter, the Charterers shall provide written evidence, to the reasonable satisfaction of the Owners, of the Charterers' compliance with their obligations under this Clause.
- (c) Without prejudice to Clause 14(c) (Liabilities and Indemnities – Consequential Damages), the Charterers shall indemnify, protect, defend and hold harmless the Owners from any and all claims, costs, expenses, actions, proceedings, suits, demands, and liabilities whatsoever arising out of or in connection with the Charterers' failure to meet any of their obligations under this clause, and the Vessel shall remain on hire in respect of any time lost as a result thereof.

### **BIMCO MLC 2006 Clause for SUPPLYTIME 89**

For the purposes of this Clause:

“MLC” means the International Labour organization (ILO) Maritime Labour Convention (MLC 2006) and any amendment thereto or substitution thereof.

“Charterers' Personnel” shall mean any employees, directors, officers, servants, agents or invitees of each of the Charterers and their contractors, sub-contractors of any tier, co-venturers and customers (having a contractual relationship with the Charterers, always with respect to the job or project on which the Vessel is employed) and of each of their parent, affiliated, related and subsidiary companies, who are on board the Vessel;

- (a) The Owners shall provide the Charterers with a copy of Part I of the Declaration of Maritime Labour Compliance for the Vessel and the Charterers shall be responsible for ensuring compliance with the following requirements of MLC as applicable to the Vessel and as they may apply to the Charterers' Personnel:
- (i) Minimum age;
  - (ii) Medical certificate;
  - (iii) Training and qualifications;
  - (iv) Recruitment and placement;
  - (v) Employment agreements;
  - (vi) Wages;
  - (vii) Hours of work and rest;
  - (viii) Entitlement to leave;
  - (ix) Repatriation;
  - (x) Compensation for the Vessel's loss or foundering;
  - (xi) Liability for sickness, injury and death;
  - (xii) Health and safety protection and accident prevention, to the extent that these are under the Charterers' control.
- (b) Prior to any Charterers' Personnel boarding the Vessel and upon Owners' request at any time thereafter, the Charterers shall provide written evidence, to the reasonable satisfaction of the Owners, of the Charterers' compliance with their obligations under this Clause.
- (c) Without prejudice to Clause 12(c) (Liabilities and Indemnities – Consequential Damages), the Charterers shall indemnify, protect, defend and hold harmless the Owners from any and all claims, costs, expenses, actions, proceedings, suits, demands, and liabilities whatsoever arising out of or in connection with the Charterers' failure to meet any of their obligations under this clause, and the Vessel shall remain on hire in respect of any time lost as a result thereof.

E. Annex BARECON 2017

|    |  | <b>BARECON 2017</b><br><small>STANDARD BAREBOAT CHARTER PARTY PART I</small>  |  |
|---|--|---|--|
| 1. Place and date   |  |   |  |
| 2. Owners (Cl. 1)<br>(i) Name:<br>(ii) Place of registered office:<br>(iii) Law of registry:  |  | 3. Charterers (Cl. 1)<br>(i) Name:<br>(ii) Place of registered office:<br>(iii) Law of registry:  |  |
| 4. Vessel (Cl. 1 and 3)<br>(i) Name:<br>(ii) IMO number:<br>(iii) Flag State:<br>(iv) Type:   |  | 4. Vessel (Cl. 1 and 3)<br>(v) GT/NT:<br>(vi) Summer DWT:<br>(vii) When/where built:<br>(viii) Classification Society:  |  |
| 5. Date of last special survey by the Vessel's Classification Society   |  | 5. Validity of class certificates (state number of months to apply)<br>(i) Delivery (Cl. 3):<br>(ii) Redelivery (Cl. 10):   |  |
| 7. Latent Defects (state number of months to apply) (Cl. 1, 3)  |  | 8. Port or place of delivery (Cl. 3)  |  |
| 9. Delivery notices (Cl. 4)<br>days' approximate notices and definite notices   |  | 10. Time for delivery (Cl. 4)   |  |
| 11. Cancelling date (Cl. 4, 5)  |  | 12. Port or place of redelivery (Cl. 10)  |  |
| 13. Redelivery notices (Cl. 10)<br>days' approximate notices and definite notices   |  | 14. Trading limits (Cl. 11)   |  |
| 15. Bunker fuels, unused oils and greases (optional, state if (a) actual net price, or (b) current net market price) to apply) (Cl. 9)  |  | 16. Charter period (Cl. 2)  |  |
| 17. Charter hire (state currency and amount) (Cl. 7, 10 and 15)<br>(i) Charter hire:<br>(ii) Charter hire for optional period:  |  | 18. Optional period and notice (Cl. 2)<br>(i) State extension period in months:<br>(ii) State when declarable:  |  |
| 19. Rate of interest payable (Cl. 15(g))  |  | 20. Owners' bank details (state beneficiary and bank account) (Cl. 15)  |  |
| 21. New class and other regulatory requirements (Cl. 13(b))<br>(i) State if 13(b)(i) or (ii) to apply:<br>(ii) Threshold amount (AMT):<br>(iii) Vessel's expected remaining life in years on the date of delivery:  |  |   |  |
| 22. Mortgage(s), if any (state if 16(a) or (b) to apply; if 16(b) applies state date of Financial instrument and name of Mortgagee(s)/Place of business) (Cl. 1, 16)  |  |   |  |
| 23. Insured Total Loss value (Cl. 17)   |  | 24. Insuring party (state if Cl. 17(b) (Charterers to insure) or Cl. 17(c) (Owners to insure) to apply)   |  |
| 25. Performance guarantee (state amount and entity) (Cl. 27) (optional)   |  |   |  |
| 26. Dispute Resolution (state 33(a), 33(b), 33(c) or 33(d); if 33(c) is agreed, state Singapore or English law; if 33(d) is agreed, state governing law and place of arbitration) (Cl. 33)  |  |   |  |
| 27. Newbuilding Vessel (indicate with "yes" or "no" whether PART III applies and if "yes", complete details below) (optional)<br><br>(i) Name of Builders:<br>(ii) Hull number:<br>(iii) Date of newbuilding contract:<br>(iv) Liquidated damages for physical defects or deficiencies (state party):<br>(v) Liquidated damages for delay in delivery (state party):  |  |   |  |
| 28. Purchase Option (indicate with "yes" or "no" whether PART IV applies) (optional)  |  | 29. Bareboat Charter Registry (indicate with "yes" or "no" whether PART V applies and if "yes", complete details below) (optional)<br>(i) Underlying Registry:<br>(ii) Bareboat Charter Registry: |  |
| 30. Notices to Owners (state full style details for serving notices) (Cl. 34)   |  | 31. Notices to Charterers (state full style details for serving notices) (Cl. 34)   |  |
| Signature (Owners)  |  | Signature (Charterers)  |  |
| <p>It is mutually agreed that this Charter Party shall be performed subject to the conditions contained in this Charter Party which shall include PART I and PART II. In the event of a conflict of conditions, the provisions of PART I shall prevail over those of PART II to the extent of such conflict but no further. It is further mutually agreed that PART III and/or PART IV and/or PART V shall only apply and only form part of this Charter Party if expressly agreed and stated in Box 27, 28 and 29. If PART III and/or PART IV and/or PART V applies, it is further agreed that in the event of a conflict of conditions, the provisions of PART I and PART II shall prevail over those of PART III and/or PART IV and/or PART V to the extent of such conflict but no further.</p> |  |   |  |
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**PART II**  
**BARECON 2017 Standard Bareboat Charter Party**

**1. Definitions**

In this Charter Party:

"Banking Day" means a day on which banks are open in the places stated in Boxes 2, 3, 30 and 31, and, for payments in US dollars, in New York.

"Charterers" means the party identified in Box 3.

"Crew" means the Master, officers and ratings and any other personnel employed on board the Vessel.

"Financial Instrument" means the mortgage, deed of covenant or other such financial security instrument as identified in Box 22.

"Flag State" means the flag state in Box 4 or such other flag state to which the Charterers may have re-registered the Vessel with the Owners' consent during the Charter Period.

"Latent Defect" means a defect which could not be discovered on such an examination as a reasonably careful skilled person would make.

"Owners" means the party identified in Box 2.

"Total Loss" means an actual, constructive, compromised or agreed total loss of the Vessel under the insurances.

"Vessel" means the vessel described in Box 4 including its equipment, machinery, boilers, fixtures and fittings.

**2. Charter Period**

The Owners have agreed to let and the Charterers have agreed to hire the Vessel for the period stated in Box 16 ("Charter Period").

The Charterers shall have the option to extend the Charter Period by the period stated in Box 18(i) at the rate stated in Box 17(ii), which option shall be exercised by written notice to the Owners latest as stated in Box 18(ii).

Subject to the terms and conditions herein provided, during the Charter Period the Vessel shall be in the full possession and at the absolute disposal for all purposes of the Charterers and under their complete control in every respect.

**3. Delivery**

(not applicable when Part III applies, as stated in Box 27).

- (a) The Owners shall deliver the Vessel in a seaworthy condition and in every respect ready for service under this Charter Party and in accordance with the particulars stated in Boxes 4 to 6.

If the Charterers have inspected the Vessel prior to delivery, the Vessel shall be delivered by the Owners in the same condition as at the time of inspection, fair wear and tear excepted.

The Vessel shall be delivered by the Owners and taken over by the Charterers at the port or place stated in Box 8 at such readily accessible safe berth or mooring as the Charterers may direct.

- (b) The Vessel shall be properly documented on delivery in accordance with the laws and regulations of the Flag State and the requirements of the Classification Society stated in Box 4. The Vessel upon delivery shall have its

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**BARECON 2017 Standard Bareboat Charter Party**

survey cycles up to date and class certificates valid and unextended for at least the number of months stated in Box 6(i) free of any conditions or recommendations. If Box 6(i) is not filled in, then six (6) months shall apply.

- (c) The delivery of the Vessel by the Owners and the taking over of the Vessel by the Charterers shall constitute a full performance by the Owners of all the Owners' obligations under this Clause, and thereafter the Charterers shall not be entitled to make or assert any claim against the Owners on account of any conditions, representations or warranties expressed or implied with respect to the Vessel but the Owners shall be liable for the cost of but not the time for repairs or renewals arising out of Latent Defects in the Vessel existing at the time of delivery under this Charter Party, provided such Latent Defects manifest themselves within the number of months after delivery stated in Box 7. If Box 7 is not filled in, then twelve (12) months shall apply.

**4. Time for Delivery**

(not applicable when Part III applies, as stated in Box 27)

The Vessel shall not be delivered before the date stated in Box 10 without the Charterers' consent and the Owners shall exercise due diligence to deliver the Vessel not later than the date stated in Box 11.

The Owners shall keep the Charterers informed of the Vessel's itinerary for the voyage leading up to delivery and shall serve the Charterers with the number of days approximate/definite notices of the Vessel's delivery stated in Box 9. Following the tender of any such notices the Owners shall give or allow to be given to the Vessel only such further employment orders as are reasonably expected when given to allow delivery to occur by the date notified.

**5. Cancelling**

(not applicable when Part III applies, as stated in Box 27)

- (a) Should the Vessel not be delivered by the cancelling date stated in Box 11, the Charterers shall have the option of cancelling this Charter Party.
- (b) If it appears that the Vessel will be delayed beyond the cancelling date, the Owners may, as soon as they are in a position to state with reasonable certainty the day on which the Vessel should be ready, give notice thereof to the Charterers asking whether they will exercise their option of cancelling, and the option must then be declared within three (3) Banking Days of the receipt by the Charterers of such notice. If the Charterers do not then exercise their option of cancelling, the readiness date stated in the Owners' notice shall be substituted for the cancelling date stated in Box 11 for the purpose of this Clause 5 (Cancelling).
- (c) Cancellation under this Clause 5 (Cancelling) shall be without prejudice to any claim the Charterers may otherwise have against the Owners under this Charter Party.

**6. Familiarisation**

- (a) The Charterers shall have the right to place a maximum of two (2) representatives on board the Vessel at their sole risk and expense for a reasonable period prior to the delivery of the Vessel.

The Charterers and the Charterers' representatives shall sign the Owners' usual letter of indemnity prior to embarkation.

- (b) The Owners shall have the right to place a maximum of two (2) representatives on board the Vessel at their sole risk and expense for a reasonable period prior to the redelivery of the Vessel.

The Owners and the Owners' representatives shall sign the Charterers' usual letter of indemnity prior to embarkation.

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- (c) Such representatives shall be on board for the purpose of familiarisation and in the capacity of observers only, and they shall not interfere in any respect with the operation of the Vessel.

**7. Surveys on Delivery and Redelivery**

- (a) The Owners and Charterers shall each appoint and pay for their respective surveyors for the purpose of determining and agreeing in writing the condition of the Vessel at the time of delivery and redelivery hereunder. The Owners shall bear all the Vessel's expenses related to the on-hire survey including loss of time, if any. The Charterers shall bear all the Vessel's expenses related to the off-hire survey including loss of time, if any.

- (b) Divers inspection on delivery/re-delivery

The Charterers shall have the option at delivery and the Owners shall have the option at redelivery, at their respective time, cost and expense, to arrange for an underwater inspection by a diver approved by the Classification Society, in the presence of a Classification Society surveyor, to determine the condition of the rudder, propeller, bottom and other underwater parts of the Vessel.

**8. Inventories**

A complete inventory of the Vessel's equipment, outfit, spare parts and consumable stores on board the Vessel shall be made by the parties on delivery and redelivery of the Vessel.

**9. Bunker fuels, oils and greases**

The Charterers and the Owners, respectively, shall at the time of delivery and redelivery take over and pay for all bunker fuels and unused lubricating and hydraulic oils and greases in storage tanks and unopened drums at:

- (a)\* The actual price paid (excluding barging expenses) as evidenced by invoices or vouchers.  
(b)\* The current market price (excluding barging expenses) at the port and date of delivery/redelivery of the Vessel or, if unavailable, at the nearest bunkering port.

\*Subclauses (a) and (b) are alternatives; state alternative agreed in Box 15. If Box 15 is not filled in, then subclause (a) shall apply.

**10. Redelivery**

At the expiration of the Charter Period the Vessel shall be redelivered by the Charterers and taken over by the Owners at the port or place stated in Box 12 at such readily accessible safe berth or mooring as the Owners may direct.

The Charterers shall keep the Owners informed of the Vessel's itinerary for the voyage leading up to redelivery and shall serve the Owners with the number of days approximate/definite notices of the Vessel's redelivery stated in Box 13.

The Charterers warrant that they will not permit the Vessel to commence a voyage (including any preceding ballast voyage) which cannot reasonably be expected to be completed in time to allow redelivery of the Vessel within the Charter Period and in accordance with the notices given. Notwithstanding the above, should the Charterers fail to redeliver the Vessel within the Charter Period, the Charterers shall pay the daily equivalent to the rate of hire stated in Box 17(i) applicable at the time plus ten (10) per cent or the market rate, whichever is the higher, for the number of days by which the Charter Period is exceeded. Such payment of the enhanced hire rate shall be without prejudice to any claims the Owners may have against the Charterers in this respect. All other terms, conditions and provisions of this Charter Party shall continue to apply.

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Subject to the provisions of Clause 13 (Maintenance and Operation), the Vessel shall be redelivered to the Owners in the same condition and class as that in which it was delivered, fair wear and tear not affecting class excepted.

The Vessel upon redelivery shall have her survey cycles up to date and class certificates valid and unextended for at least the number of months agreed in Box 6(ii) free of any conditions or recommendations. If Box 6(i) is not filled in, then six (6) months shall apply.

All plans, drawings and manuals (excluding ISM/ISPS manuals) and maintenance records shall remain on board and accessible to the Owners upon redelivery. Any other technical documentation regarding the Vessel which may be in the Charterers' possession shall promptly after redelivery be forwarded to the Owners at their expense, if they so request. The Charterers may keep the Vessel's log books but the Owners shall have the right to make copies of the same.

**11. Trading Restrictions**

The Vessel shall be employed in lawful trades for the carriage of lawful merchandise within the trading limits stated in Box 14.

The Charterers undertake not to employ the Vessel or allow the Vessel to be employed otherwise than in conformity with the terms of the contracts of insurance (including any warranties expressed or implied therein) without first obtaining the consent of the insurers to such employment and complying with such requirements as to additional premium or otherwise as the insurers may require.

The Charterers will not do or permit to be done anything which might cause any breach or infringement of the laws and regulations of the Flag State, or of the places where the Vessel trades.

Notwithstanding any other provisions contained in this Charter Party it is agreed that nuclear fuels or radioactive products or waste are specifically excluded from the cargo permitted to be loaded or carried under this Charter Party. This exclusion does not apply to radio-isotopes used or intended to be used for any industrial, commercial, agricultural, medical or scientific purposes provided the Owners' prior approval has been obtained to loading thereof.

**12. Contracts of Carriage**

- (a) The Charterers are to procure that all documents issued during the Charter Period evidencing the terms and conditions agreed in respect of carriage of goods shall contain a paramount clause which shall incorporate the Hague-Visby Rules unless any other legislation relating to carrier's liability for cargo is compulsorily applicable in the trade. The documents shall also contain the New Jason Clause and the Both-to-Blame Collision Clause.
- (b) The Charterers are to procure that all passenger tickets issued during the Charter Period for the carriage of passengers and their luggage under this Charter Party shall contain a paramount clause which shall incorporate the Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea, 1974, and any protocol thereto, unless any other legislation relating to carrier's liability for passengers and their luggage is compulsorily applicable in the trade.

**13. Maintenance and Operation**

- (a) Maintenance

The Charterers shall properly maintain the Vessel in a good state of repair, in efficient operating condition and in accordance with good commercial maintenance practice and, at their own expense, maintain the Vessel's Class with the Classification Society stated in Box 4 and all necessary certificates.

- (b) New Class and Other Regulatory Requirements

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- (i)\* In the event of any structural changes or new equipment becoming necessary for the continued operation of the Vessel by reason of new class requirements or by compulsory legislation ("Required Modification"), all such costs shall be for the Charterers' account.
- (ii)\* In the event of any structural changes or new equipment becoming necessary for the continued operation of the Vessel by reason of a Required Modification, the costs shall be apportioned as follows:
- (1) if the costs of the Required Modification are less than the amount stated in Box 21(ii), such costs shall be for the Charterers' account;
  - (2) if the costs of the Required Modification are greater than the amount stated in Box 21(ii), the Charterers' portion of costs shall be apportioned using the formula below; all costs other than the Charterers' portion shall be for the Owners' account.

AMT = agreed amount stated in Box 21(ii)

CRM = cost of Required Modification

MEL = modification's expected life in years

VEL = the Vessel's expected remaining life in years stated in Box 21(iii) less the number of years between the date of delivery and the date of the modification.

RPY = remaining charter period in years

(i) if the Required Modification is expected to last for the remaining life of the Vessel, then:

Charterers' portion of costs =  $\frac{CRM}{VEL} \times RPY$

(ii) if the Required Modification is not expected to last for the remaining life of the Vessel, then:

Charterers' portion of costs =  $\frac{CRM}{MEL} \times RPY$

\*Subclauses 13(b)(i) and 13(b)(ii) are alternatives, state alternative agreed in Box 21(i). If Box 21(i) is not filled in, then subclause 13(b)(i) shall apply.

(c) Financial Security

The Charterers shall maintain financial security or responsibility in respect of third party liabilities as required by any government, including federal, state or municipal or other division or authority thereof, to enable the Vessel, without penalty or charge, lawfully to enter, remain at, or leave any port, place, territorial or contiguous waters of any country, state or municipality in performance of this Charter Party without any delay. This obligation shall apply whether or not such requirements have been lawfully imposed by such government or division or authority thereof. The Charterers shall make and maintain all arrangements by bond or otherwise as may be necessary to satisfy such requirements at the Charterers' sole expense and the Charterers shall indemnify the Owners against all consequences whatsoever (including loss of time) for any failure or inability to do so.

(d) Operation of the Vessel

The Charterers shall at their own expense crew, victual, navigate, operate, supply, fuel, maintain and repair the Vessel during the Charter Period and they shall be responsible for all costs and expenses whatsoever relating to their use and operation of the Vessel, including any taxes and fees. The Crew shall be the servants of the Charterers for all purposes whatsoever, even if for any reason appointed by the Owners.

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(e) Information to Owners

The Charterers shall keep the Owners advised of the intended employment, planned dry-docking and major repairs of the Vessel, as reasonably required by the Owners.

(f) Flag and Name of Vessel

During the Charter Period, the Charterers shall have the liberty to paint the Vessel in their own colours, install and display their funnel insignia and fly their own house flag. The Charterers shall also have the liberty, with the Owners' prior written consent, which shall not be unreasonably withheld, to change the flag and/or the name of the Vessel during the Charter Period. Painting and re-painting, instalment and re-instalment, registration and re-registration, if required by the Owners, shall be at the Charterers' expense and time.

(g) Changes to the Vessel

Subject to subclause 13(b) (New Class and Other Regulatory Requirements), the Charterers shall make no structural or substantial changes to the Vessel without the Owners' prior written approval. If the Owners agree to such changes, the Charterers shall, if the Owners so require, restore the Vessel, prior to redelivery of the Vessel, to its former condition.

(h) Use of the Vessel's Outfit and Equipment

The Charterers shall have the use of all outfit, equipment and spare parts on board the Vessel at the time of delivery, provided the same or their substantial equivalent shall be returned to the Owners on redelivery in the same good order and condition as on delivery as per the inventory (see Clause 8 (Inventories)), ordinary wear and tear excepted. The Charterers shall from time to time during the Charter Period replace such equipment that become unfit for use. The Charterers shall procure that all repairs to or replacement of any damaged, worn or lost parts or equipment will be effected in such manner (both as regards workmanship and quality of materials, including spare parts) as not to diminish the value of the Vessel.

The Charterers have the right to fit additional equipment at their expense and risk but the Charterers shall remove such equipment at the end of the Charter Period if requested by the Owners. Any hired equipment on board the Vessel at the time of delivery shall be kept and maintained by the Charterers and the Charterers shall assume the obligations and liabilities of the Owners under any lease contracts in connection therewith and shall reimburse the Owners for all expenses incurred in connection therewith, also for any new hired equipment required in order to comply with any regulations.

(i) Periodical Dry-Docking

The Charterers shall dry-dock the Vessel and clean and paint her underwater parts whenever the same may be necessary, but not less than once every sixty (60) calendar months or such other period as may be required by the Classification Society or Flag State.

**14. Inspection during the Charter Period**

The Owners shall have the right at any time after giving reasonable notice to the Charterers to inspect the Vessel or instruct a duly authorised surveyor to carry out such inspection on their behalf to ascertain its condition and satisfy themselves that the Vessel is being properly repaired and maintained or for any other commercial reason they consider necessary (provided it does not unduly interfere with the commercial operation of the Vessel).

The fees for such inspections shall be paid for by the Owners. All time used in respect of inspection shall be for the Charterers' account and form part of the Charter Period.

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The Charterers shall also permit the Owners to inspect the Vessel's class records, log books, certificates, maintenance and other records whenever requested and shall whenever required by the Owners furnish them with full information regarding any casualties or other accidents or damage to the Vessel.

**15. Hire**

- (a) The Charterers shall pay hire due to the Owners punctually in accordance with the terms of this Charter Party.
- (b) The Charterers shall pay to the Owners for the hire of the Vessel a lump sum in the amount stated in Box 17(i) which shall be payable not later than every thirty (30) running days in advance, the first lump sum being payable on the date and hour of the Vessel's delivery to the Charterers. Hire shall be paid continuously throughout the Charter Period.
- (c) Payment of hire shall be made to the Owners' bank account stated in Box 20.
- (d) All payments of Charter Hire and any other payments due under this Charter shall be made without any set-off whatsoever and free and clear of any withholding or deduction for, or on account of, any present or future income, freight, stamp or other taxes, levies, imposts, duties, fees, charges, restrictions or conditions of any nature. If the Charterers are required by any authority in any country to make any withholding or deduction from any such payment, the sum due from the Charterers in respect of such payment will be increased to the extent necessary to ensure that, after the making of such withholding or deduction the Owners receive a net sum equal to the amount which it would have received had no such deduction or withholding been required to be made.
- (e) If the Charterers fail to make punctual payment of hire due, the Owners shall give the Charterers three (3) Banking Days written notice to rectify the failure, and when so rectified within those three (3) Banking Days following the Owners' notice, the payment shall stand as punctual.
- Failure by the Charterers to pay hire due in full within three (3) Banking Days of their receiving a notice from Owners shall entitle the Owners, without prejudice to any other rights or claims the Owners may have against the Charterers, to terminate this Charter Party at any time thereafter, as long as hire remains outstanding.
- (f) If the Owners choose not to exercise any of the rights afforded to them by this Clause in respect of any particular late payment of hire, or a series of late payments of hire, under the Charter Party, this shall not be construed as a waiver of their right to terminate the Charter Party.
- (g) Any delay in payment of hire shall entitle the Owners to interest at the rate per annum as agreed in Box 19. If Box 19 has not been filled in, the one month interbank offered rate in London (LIBOR or its successor) for the currency stated in Box 17, as quoted on the date when the hire fell due, increased by three (3) per cent, shall apply.
- (h) Payment of interest due under subclause 15(g) shall be made within seven (7) running days of the date of the Owners' invoice specifying the amount payable or, in the absence of an invoice, at the time of the next hire payment date.
- (i) Final payment of hire, if for a period of less than thirty (30) running days, shall be calculated proportionally according to the number of days and hours remaining before redelivery and advance payment to be effected accordingly.

**16. Mortgage**

(only to apply if Box 22 has been appropriately filled in)

- (a)\* The Owners warrant that they have not effected any mortgage(s) of the Vessel and that they shall not effect any mortgage(s) without the prior consent of the Charterers, which shall not be unreasonably withheld.

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- (b)\* The Vessel chartered under this Charter Party is financed by a mortgage according to the Financial Instrument. The Charterers undertake to comply, and provide such information and documents to enable the Owners to comply, with all such instructions or directions in regard to the employment, insurances, operation, repairs and maintenance of the Vessel as laid down in the Financial Instrument or as may be directed from time to time during the currency of the Charter Party by the mortgagee(s) in conformity with the Financial Instrument, including the display or posting of such notices as the Mortgagees may require. The Charterers confirm that, for this purpose, they have acquainted themselves with all relevant terms, conditions and provisions of the Financial Instrument and agree to acknowledge this in writing in any form that may be required by the mortgagee(s). The Owners warrant that they have not effected any mortgage(s) other than stated in Box 22 and that they shall not agree to any amendment of the mortgage(s) referred to in Box 22 or effect any other mortgage(s) without the prior consent of the Charterers, which shall not be unreasonably withheld.

\*(Optional, Subclauses 16(a) and 16(b) are alternatives; indicate alternative agreed in Box 22).

**17. Insurance**

(a) General

(i) The value of the Vessel for hull and machinery (including increased value) and war risks insurance is the sum stated in Box 23, or such other sum as the parties may from time to time agree in writing. The party insuring the Vessel shall do so on such terms and conditions and with such insurers as the other party shall approve in writing, which approval shall not be unreasonably withheld, and shall name the other party as co-assured.

(ii) Notwithstanding that the parties are co-assured, these insurance provisions shall neither exclude nor discharge liability between the Owners and the Charterers under this Charter Party, but are intended to secure payment of the loss insurance proceeds as a first resort to make good the Owners' loss. If such payment is made to the Owners it shall be treated as satisfaction (but not exclusion or discharge) of the Charterers' liability towards the Owners. For the avoidance of doubt, such payment is no bar to a claim by the Owners and/or their insurers against the Charterers to seek indemnity by way of subrogation.

(iii) Nothing herein shall prejudice any rights of recovery of the Owners or the Charterers (or their insurers) against third parties.

(b)\* Charterers to insure

(i) During the Charter Period the Vessel shall be kept insured by the Charterers at their expense against hull and machinery, war, and protection and indemnity risks (and any risks against which it is compulsory to insure for the operation of the Vessel, including maintaining financial security in accordance with subclause 13(c) (Financial Security)).

(ii) Such insurances shall be arranged by the Charterers to protect the interests of the Owners and the Charterers and the mortgagee(s) (if any), and the Charterers shall be at liberty to protect under such insurances the interests of any managers they may appoint.

(iii) The Charterers shall upon the request of the Owners, provide information and promptly execute such documents as may be required to enable the Owners to comply with the insurance provisions of the Financial Instrument.

(c)\* Owners to insure

(i) During the Charter Period the Vessel shall be kept insured by the Owners at their expense against hull and machinery and war risks. The Charterers shall progress claims for recovery against any third parties for the benefit of the Owners' and the Charterers' respective interests.

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(ii) During the Charter Period the Vessel shall be kept insured by the Charterers at their expense against Protection and indemnity risks (and any risks against which it is compulsory to insure for the operation of the Vessel, including maintaining financial security in accordance with subclause 13(c) (Financial Security)).

(iii) In the event that any act or negligence of the Charterers prejudices any of the insurances herein provided, the Charterers shall pay to the Owners all losses and indemnify the Owners against all claims and demands which would otherwise have been covered by such insurances.

\*Subclauses 17(b) and 17(c) are alternatives, state alternative agreed in Box 24. If Box 24 is not filled in, then subclause 17(b) (Charterers to insure) shall apply.

**18. Repairs**

(a) Subject to the provisions of any Financial Instrument, and the approval of the Owners, the Charterers shall effect all insured repairs, and undertake settlement of all miscellaneous expenses in connection with such repairs as well as all insured charges, expenses and liabilities.

To the extent of coverage under the insurances provided for under the provisions of subclause 17(c) (Owners to insure), the Charterers shall be reimbursed under the Owners' insurances for such expenditures upon presentation of accounts.

(b) The Charterers shall remain responsible for and effect repairs and settlement of costs and expenses incurred thereby in respect of all repairs not covered by the insurances and/or not exceeding any deductibles provided for in the insurances.

(c) All time used for repairs under the provisions of subclauses 18(a) and 18(b) and for repairs of Latent Defects according to Clause 3 (Delivery) above, including any deviation, shall be for the Charterers' account and shall form part of the Charter Period.

**19. Total loss**

(a) The Charterers shall be liable to the Owners by way of damages if the Vessel becomes a Total Loss. Subject to the provisions of any Financial Instrument, if the Vessel becomes a Total Loss, all insurance payments for such loss shall be paid to the Owners who shall distribute the monies between the Owners and the Charterers according to their respective interests, which shall satisfy (but not exclude or discharge) the Charterers' liability to the Owners thereof. The Charterers undertake to notify the Owners and the mortgagee(s), if any, of any occurrences in consequence of which the Vessel is likely to become a Total Loss.

(b) Notwithstanding any other clause herein, it is recognised that the Charterers have a continuing obligation to protect and preserve the Vessel as an asset of the Owners. The Charterers shall have a continuing duty after the termination of the Charter Party to preserve and present claims on behalf of Owners and Charterers and/or any subrogated insurers against any third party held responsible for the Total Loss during the Charter Period and account for any recovery achieved.

(c) The Owners or the Charterers, as the case may be, shall upon the request of the other party, promptly execute such documents as may be required to enable the other party to abandon the Vessel to the insurers and claim a constructive total loss.

**20. Lien**

The Owners shall have a lien upon all cargoes, hires and freights (including deadfreight and demurrage) belonging or due to the Charterers or any sub-charterers, for any amounts due under this Charter Party and the Charterers shall have a lien on the Vessel for all monies paid in advance and not earned.

**21. Non-Lien**

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The Charterers will not suffer, nor permit to be continued, any lien or encumbrance incurred by them or their agents, which might have priority over the title and interest of the Owners in the Vessel.

**22. Indemnity**

(a) The Charterers shall indemnify the Owners against any loss, damage or expense arising out of or in relation to the operation of the Vessel by the Charterers, and against any lien of whatsoever nature arising out of an event occurring during the Charter Period. This shall include indemnity for any loss, damage or expense arising out of or in relation to any international convention which may impose liability upon the Owners.

(b) Without prejudice to the generality of the foregoing, the Charterers agree to indemnify the Owners against all consequences or liabilities arising from the Master, officers or agents signing bills of lading or other documents.

(c) If the Vessel is arrested or otherwise detained for any reason whatsoever other than those covered in subclause (d), the Charterers shall at their own expense take all reasonable steps to secure that within a reasonable time the Vessel is released, including the provision of bail.

(d) If the Vessel is arrested or otherwise detained by reason of a claim or claims against the Owners, the Owners shall at their own expense take all reasonable steps to secure that within a reasonable time the Vessel is released, including the provision of bail.

In such circumstances the Owners shall indemnify the Charterers against any loss, damage or expense incurred by the Charterers (including hire paid under this Charter Party) as a direct consequence of such arrest or detention.

**23. Salvage**

All salvage and towage performed by the Vessel shall be for the Charterers' benefit and the cost of repairing damage occasioned thereby shall be borne by the Charterers.

**24. Wreck Removal**

If the Vessel becomes a wreck, or any part of the Vessel is lost or abandoned, and is an obstruction to navigation or poses a hazard and has to be raised, removed, destroyed, marked or lit by order of any lawful authority having jurisdiction over the area or as a result of any applicable law, the Charterers shall be liable for any and all expenses in connection with the raising, removal, destruction, lighting or marking of the Vessel and shall indemnify the Owners against any sums whatsoever, which the Owners become liable to pay as a consequence.

**25. General Average**

The Owners shall not contribute to General Average.

**26. Assignment, Novation, Sub-Charter and Sale**

(a) The Charterers shall not assign or novate this Charter Party nor sub-charter the Vessel on a bareboat basis except with the prior consent in writing of the Owners, which shall not be unreasonably withheld, and subject to such terms and conditions as the Owners shall approve.

(b) The Owners shall not sell the Vessel during the currency of this Charter Party except with the prior written consent of the Charterers, which shall not be unreasonably withheld, and subject to the buyer accepting a novation of this Charter Party.

(c) The Owners shall be entitled to assign their rights under this Charter Party.

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**27. Performance Guarantee**

(Optional, to apply only if Box 25 filled in)

The Charterers undertake to furnish, before delivery of the Vessel, a guarantee or bond in the amount of and from the entity stated in Box 25 in a form acceptable to the Owners as guarantee for full performance of their obligations under this Charter Party.

**28. Anti-Corruption**

(a) The parties agree that in connection with the performance of this Charter Party they shall each:

(i) comply at all times with all applicable anti-corruption legislation and have procedures in place that are, to the best of its knowledge and belief, designed to prevent the commission of any offence under such legislation by any member of its organisation and/or by any person providing services for it or on its behalf; and

(ii) make and keep books, records, and accounts which in reasonable detail accurately and fairly reflect the transactions in connection with this Charter Party.

(b) If either party fails to comply with any applicable anti-corruption legislation, it shall defend and indemnify the other party against any fine, penalty, liability, loss or damage and for any related costs (including, without limitation, court costs and legal fees) arising from such breach.

(c) Without prejudice to any of its other rights under this Charter Party, either party may terminate this Charter Party without incurring any liability to the other party if:

(i) at any time the other party or any member of its organisation has committed a breach of any applicable anti-corruption legislation in connection with this Charter Party; and

(ii) such breach causes the non-breaching party to be in breach of any applicable anti-corruption legislation.

Any such right to terminate must be exercised without undue delay.

(d) Each party represents and warrants that in connection with the negotiation of this Charter Party neither it nor any member of its organisation has committed any breach of applicable anti-corruption legislation. Breach of this subclause (d) shall entitle the other party to terminate the Charter Party without incurring any liability to the other.

**29. Sanctions and Designated Entities**

(a) The provisions of this clause shall apply in relation to any sanction, prohibition or restriction imposed on any specified persons, entities or bodies including the designation of specified vessels or fleets under United Nations Resolutions or trade or economic sanctions, laws or regulations of the European Union or the United States of America.

(b) The Owners and the Charterers respectively warrant for themselves (and in the case of any sub-charter, the Charterers further warrant in respect of any sub-charterers, shippers, receivers, or cargo interests) that at the date of this fixture and throughout the duration of this Charter Party they are not subject to any of the sanctions, prohibitions, restrictions or designation referred to in subclause (a) which prohibit or render unlawful any performance under this Charter Party. The Owners further warrant that the Vessel is not a designated vessel.

(c) If at any time during the performance of this Charter Party either party becomes aware that the other party is in breach of warranty in this Clause, the party not in breach shall comply with the laws and regulations of any Government to which that party or the Vessel is subject, and follow any orders or directions which may be

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given by any body acting with powers to compel compliance, including where applicable the Owners' Flag State. In the absence of any such orders, directions, laws or regulations, the party not in breach may, in its option, terminate the Charter Party forthwith in accordance with Clause 31 (Termination).

(d) If, in compliance with the provisions of this Clause, anything is done or is not done, such shall not be deemed a deviation but shall be considered due fulfilment of this Charter Party.

(e) Notwithstanding anything in this Clause to the contrary, the Owners or the Charterers shall not be required to do anything which constitutes a violation of the laws and regulations of any State to which either of them is subject.

(f) The Owners or the Charterers shall be liable to indemnify the other party against any and all claims, losses, damage, costs and fines whatsoever suffered by the other party resulting from any breach of warranty in this Clause.

**30. Requisition/Acquisition**

(a) In the event of the requisition for hire of the Vessel by any governmental or other competent authority at any time during the Charter Period, this Charter Party shall not be deemed to be frustrated or otherwise terminated. The Charterers shall continue to pay hire according to the Charter Party until the time when the Charter Party would have expired or terminated pursuant to any of the provisions hereof. However, if any requisition hire or compensation is received by the Owners for the remainder of the Charter Period or the period of the requisition, whichever is shorter, it shall be payable by the Owners to the Charterers.

(b) In the event of the Owners being deprived of their ownership in the Vessel by any compulsory acquisition of the Vessel or requisition for title by any governmental or other competent authority (hereinafter referred to as "Compulsory Acquisition"), then, irrespective of the date during the Charter Period when Compulsory Acquisition may occur, this Charter Party shall be deemed terminated as of the date of such Compulsory Acquisition. In such event hire to be considered as earned and to be paid up to the date and time of such Compulsory Acquisition. The Owners shall be entitled to any compensation received for such Compulsory Acquisition.

**31. Termination**

(a) Charterers' Default

The Owners shall be entitled to terminate this Charter Party by written notice to the Charterers under the following circumstances and to claim damages including, but not limited to, for the loss of the remainder of the Charter Party:

(i) Non-payment of hire (see Clause 15 (Hire)).

(ii) Charterers' failure to comply with the requirements of:

(1) Clause 11 (Trading Restrictions); or

(2) Subclause 17(b) (Charterers to Insure).

(iii) The Charterers do not rectify any failure to comply with the requirements of subclause 13(a) (Maintenance) as soon as practically possible after the Owners have notified them to do so and in any event so that the Vessel's insurance cover is not prejudiced.

(b) Owners' Default

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The Charterers shall be entitled to terminate this Charter Party with immediate effect by written notice to the Owners and to claim damages including, but not limited to, for the loss of the remainder of the Charter Party:

(i) if the Owners shall by any act or omission be in breach of their obligations under this Charter Party to the extent that the Charterers are deprived of the use of the Vessel and such breach continues for a period of fourteen (14) running days after written notice thereof has been given by the Charterers to the Owners; or

(ii) if the Owners fail to arrange or maintain the insurances in accordance with subclause 17(c) (Owners to Insure).

(c) **Loss of Vessel**

This Charter Party shall be deemed to be terminated, without prejudice to any accrued rights or obligations, if the Vessel becomes lost either when it has become an actual total loss or agreement has been reached with the Vessel's underwriters in respect of its constructive total loss or if such agreement with the Vessel's underwriters is not reached it is adjudged by a competent tribunal that a constructive loss of the Vessel has occurred, or has been declared missing. The date upon which the Vessel is to be treated as declared missing shall be ten (10) days after the Vessel was last reported or when the Vessel is recorded as missing by the Vessel's underwriters, whichever occurs first.

(d) **Bankruptcy**

Either party shall be entitled to terminate this Charter Party with immediate effect by written notice to the other party if that other party has a petition presented for its winding up or administration or any other action is taken with a view to its winding up (otherwise than for the purpose of solvent reconstruction or amalgamation), or becomes bankrupt or commits an act of bankruptcy, or makes any arrangement or composition for the benefit of creditors, or has a receiver or manager or administrative receiver or administrator or liquidator appointed in respect of any of its assets, or suspends payments, or anything analogous to any of the foregoing under the law of any jurisdiction happens to it, or ceases or threatens to cease to carry on business.

(e) The termination of this Charter Party shall be without prejudice to all rights accrued due between the parties prior to the date of termination and to any claim that either party might have.

**32. Repossession**

In the event of the early termination of this Charter Party in accordance with the applicable provisions of this Charter Party, the Owners shall have the right to repossess the Vessel from the Charterers at its current or next port of call, or at a port or place convenient to them without hindrance or interference by the Charterers, courts or local authorities. Pending physical repossession of the Vessel, the Charterers shall hold the Vessel as gratuitous bailee only to the Owners. The Owners shall arrange for an authorised representative to board the Vessel as soon as reasonably practicable following the termination of this Charter Party. The Vessel shall be deemed to be repossessed by the Owners from the Charterers upon the boarding of the Vessel by the Owners' representative. All arrangements and expenses relating to the settling of wages, disembarkation and repatriation of the Crew shall be the sole responsibility of the Charterers.

**33. BIMCO Dispute Resolution Clause 2017**

(a)\* This Charter Party shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Charter Party shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

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The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within fourteen (14) calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the fourteen (14) days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of the sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 100,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

In cases where the claim or any counterclaim exceeds the sum agreed for the LMAA Small Claims Procedure and neither the claim nor any counterclaim exceeds the sum of USD 400,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Intermediate Claims Procedure current at the time when the arbitration proceedings are commenced.

(b)\* This Charter Party shall be governed by U.S. maritime law or, if this Charter Party is not a maritime contract under U.S. law, by the laws of the state of New York. Any dispute arising out of or in connection with this Charter Party shall be referred to three (3) persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen. The decision of the arbitrators or any two of them shall be final, and for the purposes of enforcing any award, judgment may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the SMA Rules current as of the date of this Charter Party.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 100,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the SMA Rules for Shortened Arbitration Procedure current as of the date of this Charter Party.

(c)\* This Charter Party shall be governed by and construed in accordance with Singapore\*\*/English\*\* law.

Any dispute arising out of or in connection with this Charter Party, including any question regarding its existence, validity or termination shall be referred to and finally resolved by arbitration in Singapore in accordance with the Singapore International Arbitration Act (Chapter 143A) and any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the Arbitration Rules of the Singapore Chamber of Maritime Arbitration (SCMA) current at the time when the arbitration proceedings are commenced.

The reference to arbitration of disputes under this Clause shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator and give notice that it has done so within fourteen (14) calendar days of that notice and stating that it will appoint its own arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the fourteen (14) days specified. If the other party does not give notice that it has done so within the fourteen (14) days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

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**PART II**  
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Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 150,000 (or such other sum as the parties may agree) the arbitration shall be conducted before a single arbitrator in accordance with the SCMA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

\*\*Delete whichever does not apply. If neither or both are deleted, then English law shall apply by default.

(d)\* This Charter Party shall be governed by and construed in accordance with the laws of the place mutually agreed by the Parties and any dispute arising out of or in connection with this Charter Party shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.

(e) The parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Charter Party. In the case of any dispute in respect of which arbitration has been commenced under subclause (a), (c) or (d), the following shall apply:

(i) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.

(ii) The other party shall thereupon within fourteen (14) calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further fourteen (14) calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.

(iii) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.

(iv) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.

(v) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.

(vi) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.

(vii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.

(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)

\*Subclauses (a), (b), (c) and (d) are alternatives; indicate alternative agreed in Box 26.

If Box 26 in Part I is not appropriately filled in, subclause (a) of this Clause shall apply. Subclause (e) shall apply in all cases except for alternative (b).

**34. Notices**

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All notices, requests and other communications required or permitted by any clause of this Charter Party shall be given in writing and shall be sufficiently given or transmitted if delivered by hand, email, express courier service or registered mail and addressed if to the Owners as stated in Box 30 or such other address or email address as the Owners may hereafter designate in writing, and if to the Charterers as stated in Box 31 or such other address or email address as the Charterers may hereafter designate in writing. Any such communication shall be deemed to have been given on the date of actual receipt by the party to which it is addressed.

**35. Partial Validity**

If by reason of any enactment or judgment any provision of this Charter Party shall be deemed or held to be illegal, void or unenforceable in whole or in part, all other provisions of this Charter Party shall be unaffected thereby and shall remain in full force and effect.

**36. Entire Agreement**

This Charter Party is the entire agreement of the parties, which supersedes all previous written or oral understandings and which may not be modified except by a written amendment signed by both parties.

**37. Headings**

The headings of this Charter Party are for identification only and shall not be deemed to be part hereof or be taken into consideration in the interpretation or construction of this Charter Party.

**38. Singular/Plural**

The singular includes the plural and vice versa as the context admits or requires.

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**PART III**  
**BARECON 2017 Standard Bareboat Charter Party**  
**PROVISIONS TO APPLY FOR NEWBUILDING VESSELS ONLY**  
**(OPTIONAL, only applicable if Box 27 has been completed)**

1. Specifications and Building Contract

- (a) The Vessel shall be constructed in accordance with the building contract between the Builders and the Owners including the specifications and plans incorporated therein ("Building Contract"). The Owners shall provide the Charterers with a copy of the Building Contract to the extent relevant to this Charter Party.
- (b) No variations shall be made to the Building Contract without the Charterers' prior written consent. The Charterers shall be entitled to request change orders in accordance with the Building Contract. Any additional costs or consequences due to Charterers' change orders shall be borne by the Charterers.
- (c) The Owners and the Charterers will liaise and cooperate in all matters regarding the construction of the Vessel and the Building Contract. The Charterers shall have the right to send their representative to the Builders' yard to inspect the Vessel during its construction.
- (d) The Owners shall assign their guarantee rights under the Building Contract to the Charterers, if permitted. If not permitted, the Owners shall exercise their guarantee rights against the Builders for the benefit of the Charterers. The Charterers shall be obliged to accept such sums as the Owners are reasonably able to recover under the guarantee provisions of the Building Contract.

2. Delivery and Cancellation

- (a) (i) Subject to the provisions of Clause 3 (Liquidated Damages) hereunder, the Charterers shall be obliged to accept the Vessel from the Owners, constructed and delivered in accordance with the Building Contract and including buyers' supplies, on the date of delivery by the Builders. The Charterers undertake that having accepted the Vessel they will not thereafter raise any claims against the Owners in respect of the Vessel's performance or specification or defects, if any.  
  
(ii) The date of delivery for the purpose of this Charter shall be the date (the "Delivery Date") when the Vessel is in fact delivered by the Builders to the Owners in accordance with the Building Contract, whether that is before or after the scheduled delivery date under the Building Contract. The Owners shall be under no responsibility for any delay whatsoever in delivery of the Vessel to the Charterers under this Charter Party, except to the extent caused solely by the Owners' acts or omissions resulting in a default by the Owners under the Building Contract. The Owners shall be responsible to the Charterers for any direct losses incurred by the Charterers, if the Vessel is not delivered to the Owners due solely to the Owners' acts or omissions resulting in a default by the Owners under the Building Contract.  
  
(iii) The Owners and the Charterers shall on the Delivery Date sign a Protocol of Delivery and Acceptance evidencing delivery of the Vessel hereunder.
- (b) (i) The Owners' obligation to charter the Vessel to the Charterers hereunder is conditional upon delivery of the Vessel to the Owners by the Builders in accordance with the Building Contract.  
  
(ii) If for any reason other than a default by the Owners under the Building Contract, the Builders become entitled under that Contract not to deliver the Vessel and exercise that right, the Owners shall be entitled to cancel this Charter Party by written notice to the Charterers.  
  
(iii) If for any reason the Owners become entitled to cancel the Building Contract and exercise that right, the Owners shall be entitled to cancel this Charter Party by written notice to the Charterers. If, however, the Owners do not exercise their right to cancel the Building Contract, the Charterers shall be entitled to cancel this Charter Party by written notice to the Owners.

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**PART III**  
**BARECON 2017 Standard Bareboat Charter Party**  
**PROVISIONS TO APPLY FOR NEWBUILDING VESSELS ONLY**  
**(OPTIONAL, only applicable if Box 27 has been completed)**

3. Liquidated Damages

- (a) Any liquidated damages for physical defects or deficiencies and any costs incurred in pursuing a claim therefor shall be credited to the party stated in Box 27(iv) or if not filled in shall be shared equally between the parties.
- (b) Any liquidated damages for delay in delivery under the Building Contract and any costs incurred in pursuing a claim therefor shall be credited to the party stated in Box 27(v) or if not filled in shall be shared equally between the parties.

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**PART IV**  
**BARECON 2017 Standard Bareboat Charter Party**  
**PURCHASE OPTION**  
(OPTIONAL, only applicable if Box 28 has been completed)

1. The Charterers shall have an option to purchase the Vessel (the "Purchase Option") exercisable on each of the dates stated below as follows:

| Date (state number of months after delivery of the Vessel) | Purchase Price (the "Purchase Option Price") |
|--|--|
| (months)   | (amount and currency)                        |
|  |  |
|  |  |

2. To exercise their Purchase Option, the Charterers shall notify the Owners in writing not later than six (6) months prior to the relevant date stated in the table above. Such notification shall not be withdrawn or cancelled.
3. If the Charterers exercise their Purchase Option, the ownership of the Vessel shall be transferred to them on the relevant date. If such date is not a Banking Day, the ownership of the Vessel shall be transferred on the next Banking Day, on a strictly "as is/where is" basis, at the Charterers' sole cost and expense.
4. The Owners shall obtain and provide the Charterers with such documents and take such actions as the Charterers may reasonably request to facilitate the sale and the registration of the Vessel under the flag designated by the Charterers.
5. The Owners warrant that the Vessel at the time of transfer of ownership shall be free of any of Owners' encumbrance or mortgage and that they have not committed any act or omission which would impair title to the Vessel.
6. The Owners make no representation or warranty as to the seaworthiness, value, condition, design, merchantability or operation of the Vessel, or as to the quality of the material, equipment or workmanship in the Vessel, or as to the fitness of the Vessel for any particular trade.
7. In exchange for the transfer of ownership of the Vessel, the Charterers shall pay the Purchase Option Price to the bank account nominated by the Owners together with any unpaid charter hire and other amounts due and payable under this Charter Party.
8. Upon payment and transfer of ownership in accordance with Clause 7 above, this Charter Party and all rights and obligations of the parties shall terminate without prejudice to all rights accrued due between the parties prior to the date of termination and any claim that either party might have.

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**PART V**  
**BARECON 2017 Standard Bareboat Charter Party**  
**PROVISIONS TO APPLY FOR VESSELS REGISTERED IN A BARECOAT CHARTER REGISTRY**  
(OPTIONAL, only to apply if expressly agreed and stated in Box 29)

1. Definitions

"Bareboat Charter Registry" shall mean the registry stated in Box 29(ii) whose flag the Vessel will fly and in which the Charterers are registered as the bareboat charterers during the period of this Charter Party.

"Underlying Registry" shall mean the registry stated in Box 29(i) in which the Owners of the Vessel are registered as Owners and to which jurisdiction and control of the Vessel will revert upon termination of the Bareboat Charter registration.

2. The Owners have agreed to and the Charterers shall arrange for the Vessel to be registered under the Bareboat Charter Registry. The Charterers shall be responsible for all costs thereof.
3. Upon termination of this Charter Party for any reason whatsoever the Charterers shall immediately arrange for the deletion of the Vessel from the Bareboat Registry.
4. In the event of the Vessel being deleted from the Bareboat Charter Registry due to any default by the Owners, the Charterers shall have the right to terminate this Charter forthwith and without prejudice to any other claim they may have against the Owners under this Charter Party.

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F. Annex SHIPMAN 2009

|   |  |   |   |  |
|---|--|---|---|--|
|    |  | <h1>SHIPMAN 2009</h1> <p>STANDARD SHIP MANAGEMENT AGREEMENT PART I</p>  |   |  |
| 1. Place and date of Agreement  | 2. Date of commencement of Agreement (Cl. 2, 12, 21 and 25)  | 3. Owners (name, place of registered office and law of registry) (Cl. 1)<br>(i) Name:<br>(ii) Place of registered office:<br>(iii) Law of registry:   | 4. Managers (name, place of registered office and law of registry) (Cl. 1)<br>(i) Name:<br>(ii) Place of registered office:<br>(iii) Law of registry: |  |
| 5. The Company (with reference to the ISM/ISPS Codes) (state name and IMO Unique Company Identification number. If the Company is a third party then also state registered office and principal place of business) (Cl. 1 and 9(c)(i))<br>(i) Name:<br>(ii) IMO Unique Company identification number:<br>(iii) Place of registered office:<br>(iv) Principal place of business: | 6. Technical Management (state "yes" or "no" as agreed) (Cl. 4)  | 7. Crew Management (state "yes" or "no" as agreed) (Cl. 5(a))   | 8. Commercial Management (state "yes" or "no" as agreed) (Cl. 6)  |  |
|   | 9. Chartering Services period (only to be filled in if "yes" stated in Box 8) (Cl.6(a))                      | 10. Crew Insurance arrangements (state "yes" or "no" as agreed)<br>(i) Crew Insurances* (Cl. 5(b)):<br>(ii) Insurance for persons proceeding to sea onboard (Cl. 5(b)(i)):<br>*only to apply if Crew Management (Cl. 5(a)) agreed (see Box 7) | 11. Insurance arrangements (state "yes" or "no" as agreed) (Cl. 7)  | 12. Optional Insurances (state optional insurance(s) as agreed, such as piracy, kidnap and ransom, loss of hire and P&O/D) (Cl. 10(a)(iv)) |
|   | 13. Interest (state rate of interest to apply after due date to outstanding sums) (Cl. 9(a))                 | 14. Annual management fee (state annual amount) (Cl. 12(a))   | 15. Manager's nominated account (Cl.12(a))  | 16. Daily rate (state rate for days in excess of those agreed in budget) (Cl. 12(c))   |
| 18. Minimum contract period (state number of months) (Cl. 21(a))  | 19. Management fee on termination (state number of months to apply), (Cl. 22(g))                             | 17. Lay-up period / number of months (Cl.12(d))   | 20. Severance Costs (state maximum amount) (Cl. 22(h)(ii))  |  |
| 22. Notices (state full style contact details for serving notice and communication to the Owners) (Cl. 24)  | 23. Notices (state full style contact details for serving notice and communication to the Managers) (Cl. 24) | 21. Dispute Resolution (state alternative Cl. 23(a), 23(b) or 23(c), if Cl. 23(c) is agreed, place of arbitration must be stated) (Cl. 23)  |   |  |

|                       |                         |
|-----------------------|-------------------------|
| Signature(s) (Owners) | Signature(s) (Managers) |
|-----------------------|-------------------------|

Sample copy

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PART II  
SHIPMAN 2009 STANDARD SHIP MANAGEMENT AGREEMENT

SECTION 1 – Basis of the Agreement

1. Definitions

In this Agreement save where the context otherwise requires, the following words and expressions shall have the meanings hereby assigned to them:

"Company" (with reference to the ISM Code and the ISPS Code) means the organization identified in Box 5 or any replacement organization appointed by the Owners from time to time (see Sub-clauses 9(b)(i) or 9(c)(ii), whichever is applicable).

"Crew" means the personnel of the numbers, rank and nationality specified in Annex "B" hereto.

"Crew insurances" means insurance of liabilities in respect of crew risks which shall include but not be limited to death, permanent disability, sickness, injury, repatriation, shipwreck unemployment indemnity and loss of personal effects (see Sub-clause 5(b) (Crew insurances) and Clause 7 (Insurance Arrangements) and Clause 10 (Insurance Policies) and Boxes 10 and 11).

"Crew Support Costs" means all expenses of a general nature which are not particularly referable to any individual vessel for the time being managed by the Managers and which are incurred by the Managers for the purpose of providing an efficient and economic management service and, without prejudice to the generality of the foregoing, shall include the cost of crew standby pay, training schemes for officers and ratings, cadet training schemes, sick pay, study pay, recruitment and interviews.

"Flag State" means the State whose flag the Vessel is flying.

"ISM Code" means the International Management Code for the Safe Operation of Ships and for Pollution Prevention and any amendment thereto or substitution therefor.

"ISPS Code" means the International Code for the Security of Ships and Port Facilities and the relevant amendments to Chapter XI of SOLAS and any amendment thereto or substitution therefor.

"Managers" means the party identified in Box 4.

"Management Services" means the services specified in SECTION 2 - Services (Clauses 4 through 7) as indicated affirmatively in Boxes 6 through 8, 10 and 11, and all other functions performed by the Managers under the terms of this Agreement.

"Owners" means the party identified in Box 3.

"Severance Costs" means the costs which are legally required to be paid to the Crew as a result of the early termination of any contracts for service on the Vessel.

"SMS" means the Safety Management System (as defined by the ISM Code).

"STCW 95" means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995 and any amendment thereto or substitution therefor.

"Vessel" means the vessel or vessels details of which are set out in Annex "A" attached hereto.

2. Commencement and Appointment

With effect from the date stated in Box 2 for the commencement of the Management Services and continuing unless and until terminated as provided herein, the Owners hereby appoint the Managers and the Managers hereby agree to act as the Managers of the Vessel in respect of the Management Services.

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PART II  
SHIPMAN 2009 STANDARD SHIP MANAGEMENT AGREEMENT

3. Authority of the Managers

Subject to the terms and conditions herein provided, during the period of this Agreement the Managers shall carry out the Management Services in respect of the Vessel as agents for and on behalf of the Owners. The Managers shall have authority to take such actions as they may from time to time in their absolute discretion consider to be necessary to enable them to perform the Management Services in accordance with sound ship management practice, including but not limited to compliance with all relevant rules and regulations.

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PART II  
SHIPMAN 2009 STANDARD SHIP MANAGEMENT AGREEMENT

SECTION 2 – Services

4. Technical Management

(only applicable if agreed according to Box 6).

The Managers shall provide technical management which includes, but is not limited to, the following services:

- (a) ensuring that the Vessel complies with the requirements of the law of the Flag State;
- (b) ensuring compliance with the ISM Code;
- (c) ensuring compliance with the ISPS Code;
- (d) providing competent personnel to supervise the maintenance and general efficiency of the Vessel;
- (e) arranging and supervising dry dockings, repairs, alterations and the maintenance of the Vessel to the standards agreed with the Owners provided that the Managers shall be entitled to incur the necessary expenditure to ensure that the Vessel will comply with all requirements and recommendations of the classification society, and with the law of the Flag State and of the places where the Vessel is required to trade;
- (f) arranging the supply of necessary stores, spares and lubricating oil;
- (g) appointing surveyors and technical consultants as the Managers may consider from time to time to be necessary;
- (h) in accordance with the Owners' instructions, supervising the sale and physical delivery of the Vessel under the sale agreement. However services under this sub-clause 4(h) shall not include negotiation of the sale agreement or transfer of ownership of the Vessel;
- (i) arranging for the supply of provisions unless provided by the Owners; and
- (j) arranging for the sampling and testing of bunkers.

5. Crew Management and Crew Insurances

(a) Crew Management

(only applicable if agreed according to Box 7)

The Managers shall provide suitably qualified Crew who shall comply with the requirements of STCW 95. The provision of such crew management services includes, but is not limited to, the following services:

- (i) selecting, engaging and providing for the administration of the Crew, including, as applicable, payroll arrangements, pension arrangements, tax, social security contributions and other mandatory dues related to their employment payable in each Crew member's country of domicile;
- (ii) ensuring that the applicable requirements of the law of the Flag State in respect of rank, qualification and certification of the Crew and employment regulations, such as Crew's tax and social insurance, are satisfied;
- (iii) ensuring that all Crew have passed a medical examination with a qualified doctor certifying that they are fit for the duties for which they are engaged and are in possession of valid medical certificates issued in accordance with appropriate Flag State requirements or such higher standard of medical examination as may be agreed with the Owners. In the absence of applicable Flag State requirements the medical certificate shall be valid at the time when the respective Crew member arrives on board the Vessel and shall be maintained for the duration of the service on board the Vessel;
- (iv) ensuring that the Crew shall have a common working language and a command of the English language of a sufficient standard to enable them to perform their duties safely;

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(v) arranging transportation of the Crew, including repatriation;

(vi) training of the Crew;

(vii) conducting union negotiations; and

(viii) if the Managers are the Company, ensuring that the Crew, on joining the Vessel, are given proper familiarisation with their duties in relation to the Vessel's SMS and that instructions which are essential to the SMS are identified, documented and given to the Crew prior to sailing.

(ix) if the Managers are not the Company:

- (1) ensuring that the Crew, before joining the Vessel, are given proper familiarisation with their duties in relation to the ISM Code; and
- (2) instructing the Crew to obey all reasonable orders of the Company in connection with the operation of the SMS.

(x) Where Managers are not providing technical management services in accordance with Clause 4 (Technical Management):

- (1) ensuring that no person connected to the provision and the performance of the crew management services shall proceed to sea on board the Vessel without the prior consent of the Owners (such consent not to be unreasonably withheld); and
- (2) ensuring that in the event that the Owners' drug and alcohol policy requires measures to be taken prior to the Crew joining the Vessel, implementing such measures;

(b) Crew Insurances

(only applicable if Sub-clause 5(a) applies and if agreed according to Box 10)

The Managers shall throughout the period of this Agreement provide the following services:

- (i) arranging Crew insurances in accordance with the best practice of prudent managers of vessels of a similar type to the Vessel, with sound and reputable insurance companies, underwriters or associations. Insurances for any other persons proceeding to sea onboard the Vessel may be separately agreed by the Owners and the Managers (see Box 10);
- (ii) ensuring that the Owners are aware of the terms, conditions, exceptions and limits of liability of the insurances in Sub-clause 5(b)(i);
- (iii) ensuring that all premiums or calls in respect of the insurances in Sub-clause 5(b)(i) are paid by their due date;
- (iv) if obtainable at no additional cost, ensuring that insurances in Sub-clause 5(b)(i) name the Owners as a joint assured with full cover and, unless otherwise agreed, on terms such that Owners shall be under no liability in respect of premiums or calls arising in connection with such insurances.
- (v) providing written evidence, to the reasonable satisfaction of the Owners, of the Managers' compliance with their obligations under Sub-clauses 5(b)(ii) and 5(b)(iii) within a reasonable time of the commencement of this Agreement, and of each renewal date and, if specifically requested, of each payment date of the insurances in Sub-clause 5(b)(i).

6. Commercial Management

(only applicable if agreed according to Box 8).

The Managers shall provide the following services for the Vessel in accordance with the Owners' instructions,

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which shall include but not be limited to:

- (a) seeking and negotiating employment for the Vessel and the conclusion (including the execution thereof) of charter parties or other contracts relating to the employment of the Vessel. If such a contract exceeds the period stated in Box 9, consent thereto in writing shall first be obtained from the Owners;
  - (b) arranging for the provision of bunker fuels of the quality specified by the Owners as required for the Vessel's trade;
  - (c) voyage estimating and accounting and calculation of hire, freights, demurrage and/or despatch monies due from or due to the charterers of the Vessel; assisting in the collection of any sums due to the Owners related to the commercial operation of the Vessel in accordance with Clause 11 (Income Collected and Expenses Paid on Behalf of Owners);
- If any of the services under Sub-clauses 6(a), 6(b) and 6(c) are to be excluded from the Management Fee, remuneration for these services must be stated in Annex E (Fee Schedule). See Sub-clause 12(e).
- (d) issuing voyage instructions;
  - (e) appointing agents;
  - (f) appointing stevedores; and
  - (g) arranging surveys associated with the commercial operation of the Vessel.

**7. Insurance Arrangements**

(only applicable if agreed according to Box 11)

The Managers shall arrange insurances in accordance with Clause 10 (Insurance Policies), on such terms as the Owners shall have instructed or agreed, in particular regarding conditions, insured values, deductibles, franchises and limits of liability.

**PART II**  
**SHIPMAN 2009 STANDARD SHIP MANAGEMENT AGREEMENT**

**SECTION 3 – Obligations**

**8. Managers' Obligations**

- (a) The Managers undertake to use their best endeavours to provide the Management Services as agents for and on behalf of the Owners in accordance with sound ship management practice and to protect and promote the interests of the Owners in all matters relating to the provision of services hereunder.

Provided however, that in the performance of their management responsibilities under this Agreement, the Managers shall be entitled to have regard to their overall responsibility in relation to all vessels as may from time to time be entrusted to their management and in particular, but without prejudice to the generality of the foregoing, the Managers shall be entitled to allocate available supplies, manpower and services in such manner as in the prevailing circumstances the Managers in their absolute discretion consider to be fair and reasonable.

- (b) Where the Managers are providing technical management services in accordance with Clause 4 (Technical Management), they shall procure that the requirements of the Flag State are satisfied and they shall agree to be appointed as the Company, assuming the responsibility for the operation of the Vessel and taking over the duties and responsibilities imposed by the ISM Code and the ISPS Code, if applicable.

**9. Owners' Obligations**

- (a) The Owners shall pay all sums due to the Managers punctually in accordance with the terms of this Agreement. In the event of payment after the due date of any outstanding sums the Manager shall be entitled to charge interest at the rate stated in Box 15.

- (b) Where the Managers are providing technical management services in accordance with Clause 4 (Technical Management), the Owners shall:

- (i) report (or where the Owners are not the registered owners of the Vessel procure that the registered owners report) to the Flag State administration the details of the Managers as the Company as required to comply with the ISM and ISPS Codes;

- (ii) procure that any officers and ratings supplied by them or on their behalf comply with the requirements of STCW 95; and

- (iii) instruct such officers and ratings to obey all reasonable orders of the Managers (in their capacity as the Company) in connection with the operation of the Managers' safety management system.

- (c) Where the Managers are not providing technical management services in accordance with Clause 4 (Technical Management), the Owners shall:

- (i) procure that the requirements of the Flag State are satisfied and notify the Managers upon execution of this Agreement of the name and contact details of the organization that will be the Company by completing Box 5;

- (ii) if the Company changes at any time during this Agreement, notify the Managers in a timely manner of the name and contact details of the new organization;

- (iii) procure that the details of the Company, including any change thereof, are reported to the Flag State administration as required to comply with the ISM and ISPS Codes. The Owners shall advise the Managers in a timely manner when the Flag State administration has approved the Company; and

- (iv) unless otherwise agreed, arrange for the supply of provisions at their own expense.

- (d) Where the Managers are providing crew management services in accordance with Sub-clause 5(a) the Owners shall:

- (i) inform the Managers prior to ordering the Vessel to any excluded or additional premium area under any of the Owners' insurances by reason of war risks and/or piracy or like perils and pay whatever additional costs may properly be incurred by the Managers as a consequence of such orders including, if necessary, the costs of

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replacing any member of the Crew. Any delays resulting from negotiation with or replacement of any member of the Crew as a result of the Vessel being ordered to such an area shall be for the Owners' account. Should the Vessel be within an area which becomes an excluded or additional premium area the above provisions relating to cost and delay shall apply;

(ii) agree with the Managers prior to any change of flag of the Vessel and pay whatever additional costs may properly be incurred by the Managers as a consequence of such change. If agreement cannot be reached then either party may terminate this Agreement in accordance with Sub-clause 22(e); and

(iii) provide, at no cost to the Managers, in accordance with the requirements of the law of the Flag State, or higher standard, as mutually agreed, adequate Crew accommodation and living standards.

(e) Where the Managers are not the Company, the Owners shall ensure that Crew are properly familiarised with their duties in accordance with the Vessel's SMS and that instructions which are essential to the SMS are identified, documented and given to the Crew prior to sailing.

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**SECTION 4 – Insurance, Budgets, Income, Expenses and Fees**

**10. Insurance Policies**

The Owners shall procure, whether by instructing the Managers under Clause 7 (Insurance Arrangements) or otherwise, that throughout the period of this Agreement:

(a) at the Owners' expense, the Vessel is insured for not less than its sound market value or entered for its full gross tonnage, as the case may be for:

(i) hull and machinery marine risks (including but not limited to crew negligence) and excess liabilities;

(ii) protection and indemnity risks (including but not limited to pollution risks, diversion expenses and, except to the extent insured separately by the Managers in accordance with Sub-clause 5(b)(i), Crew Insurances);

NOTE: If the Managers are not providing crew management services under Sub-clause 5(a) (Crew Management) or have agreed not to provide Crew Insurances separately in accordance with Sub-clause 5(b)(i), then such insurances must be included in the protection and indemnity risks cover for the Vessel (see Sub-clause 10(a)(ii) above).

(iii) war risks (including but not limited to blocking and trapping, protection and indemnity, terrorism and crew risks); and

(iv) such optional insurances as may be agreed (such as piracy, kidnap and ransom, loss of hire and PD & D) (see Box 12)

Sub-clauses 10(a)(i) through 10(a)(iv) all in accordance with the best practice of prudent owners of vessels of a similar type to the Vessel, with sound and reputable insurance companies, underwriters or associations ("the Owners' Insurances");

(b) all premiums and calls on the Owners' Insurances are paid by their due date;

(c) the Owners' Insurances name the Managers and, subject to underwriters' agreement, any third party designated by the Managers as a joint assured, with full cover. It is understood that in some cases, such as protection and indemnity, the normal terms for such cover may impose on the Managers and any such third party a liability in respect of premiums or calls arising in connection with the Owners' Insurances.

If obtainable at no additional cost, however, the Owners shall procure such insurances on terms such that neither the Managers nor any such third party shall be under any liability in respect of premiums or calls arising in connection with the Owners' Insurances. In any event, on termination of this Agreement in accordance with Clause 21 (Duration of the Agreement) and Clause 22 (Termination), the Owners shall procure that the Managers and any third party designated by the Managers as joint assured shall cease to be joint assured and, if reasonably achievable, that they shall be released from any and all liability for premiums and calls that may arise in relation to the period of this Agreement; and

(d) written evidence is provided, to the reasonable satisfaction of the Managers, of the Owners' compliance with their obligations under this Clause 10 within a reasonable time of the commencement of the Agreement, and of each renewal date and, if specifically requested, of each payment date of the Owners' Insurances.

**11. Income Collected and Expenses Paid on Behalf of Owners**

(a) Except as provided in Sub-clause 11(c) all monies collected by the Managers under the terms of this Agreement (other than monies payable by the Owners to the Managers) and any interest thereon shall be held to the credit of the Owners in a separate bank account.

(b) All expenses incurred by the Managers under the terms of this Agreement on behalf of the Owners (including expenses as provided in Clause 12(c)) may be debited against the Owners in the account referred to under Sub-clause 11(a) but shall in any event remain payable by the Owners to the Managers on demand.

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- (c) All monies collected by the Managers under Clause 6 (Commercial Management) shall be paid into a bank account in the name of the Owners or as may be otherwise advised by the Owners in writing.

**12. Management Fee and Expenses**

- (a) The Owners shall pay to the Managers an annual management fee as stated in Box 14 for their services as Managers under this Agreement, which shall be payable in equal monthly instalments in advance, the first instalment (pro rata if appropriate) being payable on the commencement of this Agreement (see Clause 2 (Commencement and Appointment) and Box 2) and subsequent instalments being payable at the beginning of every calendar month. The management fee shall be payable to the Managers' nominated account stated in Box 15.
- (b) The management fee shall be subject to an annual review and the proposed fee shall be presented in the annual budget in accordance with Sub-clause 13(a).
- (c) The Managers shall, at no extra cost to the Owners, provide their own office accommodation, office staff, facilities and stationery. Without limiting the generality of this Clause 12 (Management Fee and Expenses) the Owners shall reimburse the Managers for postage and communication expenses, travelling expenses, and other out of pocket expenses properly incurred by the Managers in pursuance of the Management Services.
- Any days used by the Managers' personnel travelling to or from or attending on the Vessel or otherwise used in connection with the Management Services in excess of those agreed in the budget shall be charged at the daily rate stated in Box 16.
- (d) If the Owners decide to layup the Vessel and such layup lasts for more than the number of months stated in Box 17, an appropriate reduction of the Management Fee for the period exceeding such period until one month before the Vessel is again put into service shall be mutually agreed between the parties. If the Managers are providing crew management services in accordance with Sub-clause 5(a), consequential costs of reduction and reinstatement of the Crew shall be for the Owners' account. If agreement cannot be reached then either party may terminate this Agreement in accordance with Sub-clause 22(e).
- (e) Save as otherwise provided in this Agreement, all discounts and commissions obtained by the Managers in the course of the performance of the Management Services shall be credited to the Owners.

**13. Budgets and Management of Funds**

- (a) The Managers' initial budget is set out in Annex "C" hereto. Subsequent budgets shall be for twelve month periods and shall be prepared by the Managers and presented to the Owners not less than three months before the end of the budget year.
- (b) The Owners shall state to the Managers in a timely manner, but in any event within one month of presentation, whether or not they agree to each proposed annual budget. The parties shall negotiate in good faith and if they fail to agree on the annual budget, including the management fee, either party may terminate this Agreement in accordance with Sub-clause 22(e).
- (c) Following the agreement of the budget, the Managers shall prepare and present to the Owners their estimate of the working capital requirement for the Vessel and shall each month request the Owners in writing to pay the funds required to run the Vessel for the ensuing month, including the payment of any occasional or extraordinary item of expenditure, such as emergency repair costs, additional insurance premiums, bunkers or provisions. Such funds shall be received by the Managers within ten running days after the receipt by the Owners of the Managers' written request and shall be held to the credit of the Owners in a separate bank account.
- (d) The Managers shall at all times maintain and keep true and correct accounts in respect of the Management Services in accordance with the relevant International Financial Reporting Standards or such other standard as the parties may agree, including records of all costs and expenditure incurred, and produce a comparison between budgeted and actual income and expenditure of the Vessel in such form and at such intervals as shall be mutually agreed.

The Managers shall make such accounts available for inspection and auditing by the Owners and/or their

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representatives in the Managers' offices or by electronic means, provided reasonable notice is given by the Owners.

- (e) Notwithstanding anything contained herein, the Managers shall in no circumstances be required to use or commit their own funds to finance the provision of the Management Services.

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G. Annex CREWMAN A 2009

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|--|---|
|  <h1 style="margin: 0;">CREWMAN A 2009</h1> <p style="margin: 0;">STANDARD CREW MANAGEMENT AGREEMENT<br/>(COST PLUS FEE) <span style="float: right;">PART I</span></p>  |   |
| <p>1. Place and date of Agreement</p> <p>3. Owners (name, place of registered office and law of registry) (Cl. 1)<br/>(i) Name:<br/>(ii) Place of registered office:<br/>(iii) Law of registry:</p> <p>5. The Company (with reference to the ISM/ISPS Codes) (state name and IMO Unique Company Identification number, if the Company is a third party then also state registered office and principal place of business) (Cl. 1)<br/>(i) Name:<br/>(ii) IMO Unique Company Identification number:<br/>(iii) Place of registered office:<br/>(iv) Principal place of business:</p> <p>8. Interest (state rate of interest to apply after due date to outstanding sums) (Cl. 7(a))</p> <p>10. Crew Manager's nominated account (Cl. 9(a))</p> <p>13. Minimum contract period (state number of months) (Cl. 17(a))</p> <p>15. Severance Costs (state maximum amount) (Cl. 18(h)(ii))</p> <p>17. Notices (state full style contact details for serving notice and communication to the Owners) (Cl. 20)</p> | <p>2. Date of commencement of Agreement (Cl. 2, 9, 17 and 21)</p> <p>4. Crew Managers (name, place of registered office and law of registry) (Cl. 1)<br/>(i) Name:<br/>(ii) Place of registered office:<br/>(iii) Law of registry:</p> <p>6. Crew insurance arrangements (state "yes" or "no" as agreed) (Cl. 5)<br/>(i) Crew Insurances:<br/>(ii) Insurance for persons proceeding to sea onboard (Cl. 5(a)):</p> <p>7. Optional Insurances (state optional insurance(s) as agreed, such as piracy, kidnap and ransom, loss of hire and PD &amp; O) (Cl. 8(a)(vi))</p> <p>9. Crew management fee (state monthly fee (Cl. 9(a)))</p> <p>11. Daily rate (state rate for days in excess of those agreed in budget) (Cl. 9(c))</p> <p>12. Lay-up period / number of months (Cl. 9(d))</p> <p>14. Crew management fee on termination (state number of months to apply) (Cl. 18(g) and 19(h)(i))</p> <p>16. Dispute resolution (state alternative 19(a), 19(b) or 19(c), if 19(c) place of arbitration must be stated) (Cl. 19)</p> <p>18. Notices (state full style contact details for serving notice and communication to the Crew Managers) (Cl. 20)</p> |
| <p>It is mutually agreed between the party stated in Box 3 and the party stated in Box 4 that this Agreement consisting of PART I and PART II as well as Annexes "A" (Details of Vessel or Vessels), "B" (Details of Crew), "C" (Budget) and "D" (Associated Vessels) attached hereto, shall be performed subject to the conditions contained herein. In the event of a conflict of conditions, the provisions of PART I and Annexes "A", "B", "C" and "D" shall prevail over those of PART II to the extent of such conflict but no further.</p>  |   |
| <p>Signature(s) (Owners)</p>   | <p>Signature(s) (Crew Managers)</p>   |
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**SECTION 1 – Basis of the Agreement**

**1. Definitions**

In this Agreement, save where the context otherwise requires, the following words and expressions shall have the meanings hereby assigned to them.

"Company" (with reference to the ISM Code and the ISPS Code) means the organization identified in Box 5 or any replacement organization appointed by the Owners from time to time (see Sub-clause 7(b)).

"Connected Person" means any person connected with the provision and the performance of the Crew Management Services.

"Crew" means the personnel of the numbers, rank and nationality specified in Annex "B" hereto.

"Crew Insurances" means insurance of liabilities in respect of crew risks which shall include but not be limited to death, permanent disability, sickness, injury, repatriation, shipwreck, unemployment, indemnity and loss of personal effects (see Clause 5 (Crew Insurances) and Clause 8 (Insurance Policies) and Boxes 6 and 7).

"Crew Managers" means the party identified in Box 4.

"Crew Management Services" means the services specified in Clause 4 (Crew Management) and all other functions performed by the Crew Managers under the terms of this Agreement.

"Crew Support Costs" means all expenses of a general nature which are not particularly referable to any individual vessel for the time being managed by the Crew Managers and which are incurred by the Crew Managers for the purpose of providing an efficient and economic Crew Management Service and, without prejudice to the generality of the foregoing, shall include the cost of crew standby pay, training schemes for officers and ratings, cadet training schemes, sick pay, study pay, recruitment and interviews.

"Flag State" means the State whose flag the Vessel is flying.

"ISM Code" means the International Management Code for the Safe Operation of Ships and for Pollution Prevention and any amendment thereto or substitution therefor.

"ISPS Code" means the International Code for the Security of Ships and Port Facilities and the relevant amendments to Chapter XI of SOLAS and any amendment thereto or substitution therefor.

"Owners" means the party identified in Box 3.

"Severance Costs" means the costs which are legally required to be paid to the Crew as a result of the early termination of any contracts for service on the Vessel.

"SMS" means the Safety Management System (as defined by the ISM Code).

"STCW 95" means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995 and any amendment thereto or substitution therefor.

"Vessel" means the vessel or vessel's details of which are set out in Annex "A" attached hereto.

**2. Commencement and Appointment**

With effect from the date stated in Box 2 for the commencement of the Crew Management Services and continuing unless and until terminated as provided herein, the Owners hereby appoint the Crew Managers and

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the Crew Managers hereby agree to act as the crew managers of the Vessel in respect of the Crew Management Services.

3. Authority of the Crew Managers

Subject to the terms and conditions herein provided, during the period of this Agreement, the Crew Managers shall carry out the Crew Management Services in respect of the Vessel as agents for and on behalf of the Owners. The Crew Managers shall have authority to take such actions as they may from time to time in their absolute discretion consider to be necessary to enable them to perform the Crew Management Services in accordance with sound crew management practice, including but not limited to compliance with all relevant rules and regulations.

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SECTION 2 – Services

4. Crew Management

The Crew Managers shall provide suitably qualified Crew who shall comply with the requirements of STCW 95. The provision of the Crew Management Services includes, but is not limited to, the following services:

- (a) selecting, engaging and providing for the administration of the Crew, including, as applicable, payroll arrangements, pension arrangements, tax, social security contributions and other mandatory dues related to their employment payable in each Crew member's country of domicile;
- (b) ensuring that the applicable requirements of the law of the Flag State in respect of rank, qualification and certification of the Crew and employment regulations, such as Crew's tax and social insurance, are satisfied;
- (c) ensuring that all Crew have passed a medical examination with a qualified doctor certifying that they are fit for the duties for which they are engaged and are in possession of valid medical certificates issued in accordance with appropriate Flag State requirements or such higher standard of medical examination as may be agreed with the Owners. In the absence of applicable Flag State requirements the medical certificate shall be valid at the time when the respective Crew member arrives on board the Vessel and shall be maintained for the duration of the service on board the Vessel;
- (d) ensuring that the Crew shall have a common working language and a command of the English language of a sufficient standard to enable them to perform their duties safely;
- (e) ensuring that the Crew, before joining the Vessel, are given proper familiarisation with their duties in relation to the ISM Code;
- (f) instructing the Crew to obey all reasonable orders of the Owners and/or the Company including, but not limited to, orders in connection with safety and navigation, avoidance of pollution and protection of the environment;
- (g) ensuring that no Connected Person shall proceed to sea on board the Vessel without the prior consent of the Owners and/or the Company (such consent not to be unreasonably withheld);
- (h) arranging transportation of the Crew, including repatriation;
- (i) training of the Crew;
- (j) conducting union negotiations; and
- (k) in the event that the Company's drug and alcohol policy requires measures to be taken prior to the Crew joining the Vessel, implementing such measures.

5. Crew Insurances

(Only applicable if agreed according to Box 6)

The Crew Managers shall throughout the period of this Agreement provide the following services:

- (a) arranging Crew Insurances in accordance with the best practice of prudent managers of vessels of a similar type to the Vessel, with sound and reputable insurance companies, underwriters or associations. Insurances for any other persons proceeding to sea on board the Vessel may be separately agreed by the Owners and the Crew Managers (see Box 6);
- (b) ensuring that the Owners are aware of the terms, conditions, exceptions and limits of liability of the insurances

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in Sub-clause 5(a);

- (c) ensuring that all premiums or calls in respect of the insurances in Sub-clause 5(a) are paid by their due date;
- (d) if obtainable at no additional cost, ensuring that insurances in Sub-clause 5(a) name the Owners as a joint assured with full cover and, unless otherwise agreed, on terms such that Owners shall be under no liability in respect of premiums or calls arising in connection with such insurances.
- (e) providing written evidence, to the reasonable satisfaction of the Owners, of the Crew Managers' compliance with their obligations under Sub-clauses 5(b), and 5(c) within a reasonable time of the commencement of this Agreement, and of each renewal date and, if specifically requested, of each payment date of the insurances in Sub-clause 5(a).

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SECTION 3 – Obligations

6. Crew Managers' Obligations

The Crew Managers undertake to use their best endeavours to provide the Crew Management Services as agents for and on behalf of the Owners in accordance with sound crew management practice, and to protect and promote the interests of the Owners in all matters relating to the provision of services hereunder.

Provided, however, that in the performance of their management responsibilities under this Agreement, the Crew Managers shall be entitled to have regard to their overall responsibility in relation to all vessels as may from time to time be entrusted to their management and in particular, but without prejudice to the generality of the foregoing, the Crew Managers shall be entitled to allocate available manpower in such manner as in the prevailing circumstances the Crew Managers in their absolute discretion consider to be fair and reasonable.

7. Owners' Obligations

The Owners shall:

- (a) pay all sums due to the Crew Managers punctually in accordance with the terms of this Agreement. In the event of payment after the due date of any outstanding sums the Crew Manager shall be entitled to charge interest at the rate stated in Box 8;
- (b) procure that the requirements of the law of the Vessel's Flag State are satisfied and that they, or such other entity as may be appointed by them, are identified to the Crew Managers as the Company as required to comply with the ISM and ISPS Codes. If the company changes at any time during this Agreement, the Owners shall notify the Crew Managers in a timely manner of the name and contact details of the new organization;
- (c) inform the Crew Managers prior to ordering the Vessel to any excluded or additional premium area under any of the Owners' insurances by reason of war risks and/or piracy or like perils and pay whatever additional costs may properly be incurred by the Crew Managers as a consequence of such orders including, if necessary, the costs of replacing any member of the Crew. Any delays resulting from the negotiation with or replacement of any member of the Crew as a result of the Vessel being ordered to such an area shall be for the Owners' account. Should the Vessel be within an area which becomes an excluded or additional premium area the above provisions relating to cost and delay shall apply;
- (d) agree with the Crew Managers prior to any change of flag of the Vessel and pay whatever additional costs may properly be incurred by the Crew Managers as a consequence of such change. If agreement cannot be reached then either party may terminate this Agreement in accordance with Sub-clause 18(e);
- (e) provide, at no cost to the Crew Managers, in accordance with the requirements of the law of the Flag State, or higher standard, as mutually agreed, adequate Crew accommodation and living standards;
- (f) ensure that the Crew, on joining the Vessel, are properly familiarised with their duties in accordance with the Vessel's SMS and that instructions which are essential to the SMS are identified, documented and given to the Crew prior to sailing;
- (g) unless otherwise agreed, arrange for the supply of provisions, at their own expense.

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**SECTION 4—Insurance, Budgets, Income, Expenses and Fees**

**8. Insurance Policies**

The Owners shall procure that throughout the period of this Agreement:

- (a) at the Owners' expense, the Vessel is insured for not less than its sound market value or entered for its full gross tonnage, as the case may be, for:

(i) hull and machinery marine risks (including but not limited to crew negligence) and excess liabilities;

(ii) protection and indemnity risks (including but not limited to pollution risks, diversion expenses and, except to the extent insured separately by the Crew Managers in accordance with Clause 5 (Crew Insurances));

NOTE: If the Crew Managers have not agreed to provide Crew Insurances separately in accordance with Clause 5 (Crew Insurances), then such insurances must be included in the protection and indemnity risks cover for the Vessel (see Sub-clause 8(a)(i) above).

(iii) war risks (including but not limited to blocking and trapping, protection and indemnity, terrorism and crew risks); and

(iv) such other optional insurances as may be agreed (such as piracy, kidnap and ransom, loss of hire and FD & D) (see Box 7).

Sub-clauses 8(a)(i) to 8(a)(iv) all in accordance with the best practice of prudent owners of vessels of a similar type to the Vessel, with sound and reputable insurance companies, underwriters or associations ("the Owners' Insurances");

- (b) all premiums and calls on the Owners' Insurances are paid by their due date;
- (c) the Owners' Insurances name the Crew Managers and, subject to underwriters' agreement, any third party designated by the Crew Managers as a joint assured, with full cover. It is understood that in some cases, such as protection and indemnity, the normal terms for such cover may impose on the Crew Managers and any such third party a liability in respect of premiums or calls arising in connection with the Owners' Insurances;
- (d) if obtainable at no additional cost, however, the Owners shall procure such insurances on terms such that neither the Crew Managers nor any such third party shall be under any liability in respect of premiums or calls arising in connection with the Owners' Insurances. In any event, on termination of this Agreement in accordance with Clause 17 (Duration of the Agreement) and Clause 18 (Termination), the Owners shall procure that the Crew Managers and any third party designated by the Crew Managers as joint assured shall cease to be joint assured and, if reasonably achievable, that they shall be released from any and all liability for premiums and calls that may arise in relation to the period of this Agreement; and
- (e) written evidence is provided, to the reasonable satisfaction of the Crew Managers, of the Owners' compliance with their obligations under this Clause within a reasonable time of the commencement of the Agreement, and of each renewal date and, if specifically requested, of each payment date of the Owners' Insurances.

**9. Crew Management Fee and Expenses**

- (a) The Owners shall pay the Crew Managers for their services as crew managers under this Agreement a monthly fee in the amount stated in Box 9 which shall be payable in advance, the first monthly fee (pro rata if appropriate) being payable on the commencement of this Agreement (see Clause 2 (Commencement and Appointment) and Box 2) and subsequent instalments being payable at the beginning of every calendar month. The crew management fee shall be payable to the Crew Managers' nominated account stated in Box 10.

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- (b) The crew management fee shall be subject to an annual review and the proposed fee shall be presented in the annual budget referred to in Sub-clause 10(a).
- (c) The Crew Managers shall, at no extra cost to the Owners, provide their own office accommodation, office staff, facilities and stationery. Without limiting the generality of this Clause 9 (Crew Management Fee and Expenses) the Owners shall reimburse the Crew Managers for postage and communication expenses, travelling expenses, and other out of pocket expenses properly incurred by the Crew Managers in pursuance of the Crew Management Services. Any days used by any Connected Person travelling to or from or attending on the Vessel or otherwise used in connection with the Crew Management Services in excess of those agreed in the budget shall be charged at the daily rate stated in Box 11.
- (d) If the Owners decide to layup the Vessel and such layup lasts for more than the number of months stated in Box 12, an appropriate reduction of the crew management fee for the period exceeding such period until one month before the Vessel is again put into service shall be mutually agreed between the parties. Consequential costs of reduction and reinstatement of the Crew shall be for the Owners' account. If agreement cannot be reached then either party may terminate this Agreement in accordance with Sub-clause 18(e).
- (e) Save as otherwise provided in this Agreement, all discounts and commissions obtained by the Crew Managers in the course of the performance of the Crew Management Services shall be credited to the Owners.
- 10. Budgets and Management of Funds**
- (a) The Crew Managers' initial budget is set out in Annex "C" hereto. Subsequent budgets shall be for twelve month periods and shall be prepared by the Crew Managers and submitted to the Owners not less than three months before the end of the budget year.
- (b) The Owners shall state to the Crew Managers in a timely manner but in any event within one month of presentation, whether or not they agree to each proposed annual budget. The parties shall negotiate in good faith and if they fail to agree on the annual budget, including the crew management fee, either party shall have the right to terminate this Agreement in accordance with Sub-clause 18(e).
- (c) Following the agreement of the budget, the Crew Managers shall prepare and present to the Owners their estimate of the Crew costs and shall each month request the Owners in writing to pay the funds required to crew the Vessel for the ensuing month. Such funds shall be received by the Crew Managers within ten running days after the receipt by the Owners of the Crew Managers' written request and shall be held to the credit of the Owners in a separate bank account.
- (d) The Crew Managers shall at all times maintain and keep true and correct accounts in respect of the Crew Management Services in accordance with the relevant International Financial Reporting Standards or such other standard as the parties may agree, including records of all costs and expenditure incurred, and produce a comparison between budgeted and actual income and expenditure in such form and at such intervals as shall be mutually agreed.
- The Crew Managers shall make such accounts available for inspection and auditing by the Owners and/or their representatives in the Crew Managers' offices or by electronic means, provided reasonable notice is given by the Owners.
- (e) Notwithstanding anything contained herein, the Crew Managers shall in no circumstances be required to use or commit their own funds to finance the provision of the Crew Management Services.

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SECTION 5 - Legal, General and Duration of Agreement

11. Trading Restrictions

The Owners and the Crew Managers will, prior to the commencement of this Agreement, agree on any trading restrictions to the Vessel that may result from the terms and conditions of the Crew's employment.

12. Replacement

The Owners shall have the right to require the replacement, at their own expense, at the next reasonable opportunity, of any member of the Crew found on reasonable grounds to be unsuitable for service. If the Crew Managers have failed to fulfil their obligations in providing suitable qualified Crew within the meaning of Clause 4 (Crew Management), then such replacement shall be at the Crew Managers' expense.

13. Crew Managers' Right to Sub-Contract

The Crew Managers shall not have the right to sub-contract any of their obligations hereunder without the prior written consent of the Owners, which shall not be unreasonably withheld. In the event of such a sub-contract, the Crew Managers shall remain fully liable for the due performance of their obligations under this Agreement.

14. Responsibilities

(a) Force Majeure

Neither party shall be liable for any loss, damage or delay due to any of the following force majeure events and/or conditions to the extent that the party invoking force majeure is prevented or hindered from performing any or all of their obligations under this Agreement, provided they have made all reasonable efforts to avoid, minimise or prevent the effect of such events and/or conditions:

- (i) acts of God;
- (ii) any Government requisition, control, intervention, requirement or interference;
- (iii) any circumstances arising out of war, threatened act of war or warlike operations, acts of terrorism, sabotage or piracy, or the consequences thereof;
- (iv) riots, civil commotion, blockades or embargoes;
- (v) epidemics;
- (vi) earthquakes, landslides, floods or other extraordinary weather conditions;
- (vii) strikes, lockouts or other industrial action, unless limited to the employees (which shall not include the Crew) of the party seeking to invoke force majeure;
- (viii) fire, accident, explosion except where caused by negligence of the party seeking to invoke force majeure; and
- (ix) any other similar cause beyond the reasonable control of either party.

(b) Crew Managers' liability to Owners

Without prejudice to Sub-clause 14(a) the Crew Managers shall be under no liability whatsoever to the Owners for any loss, damage, delay or expense of whatsoever nature, whether direct or indirect (including but not limited

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to loss of profit arising out of or in connection with detention of or delay to the Vessel) and howsoever arising in the course of performance of the Crew Management Services UNLESS same is proved to have resulted solely from the negligence, gross negligence or wilful default of the Crew Managers or their employees or agents, or sub-contractors employed by them in connection with the Vessel, in which case (save where loss, damage, delay or expense has resulted from the Crew Managers' personal act or omission committed with the intent to cause same or recklessly and with knowledge that such loss, damage, delay or expense would probably result) the Crew Managers' liability for each incident or series of incidents giving rise to a claim or claims shall never exceed a total of ten (10) times the annual crew management fee payable hereunder.

(c) Acts or omissions of the Crew

Notwithstanding anything that may appear to the contrary in this Agreement, the Crew Managers shall not be liable for any acts or omissions of the Crew, even if such acts or omissions are negligent, grossly negligent or wilful, except only to the extent that they are shown to have resulted from a failure by the Crew Managers to discharge their obligations under Clause 6 (Crew Manager's Obligations), in which case their liability shall be limited in accordance with the terms of this Clause 14 (Responsibilities).

(d) Indemnity

Except to the extent and solely for the amount therein set out that the Crew Managers would be liable under Sub-clause 14(b) the Owners hereby undertake to keep the Crew Managers and their employees, agents and sub-contractors indemnified and to hold them harmless against all actions, proceedings, claims, demands or liabilities whatsoever or howsoever arising which may be brought against them or incurred or suffered by them arising out of or in connection with the performance of the Agreement, and against and in respect of all costs, loss, damages and expenses (including legal costs and expenses on a full indemnity basis) which the Crew Managers may suffer or incur (either directly or indirectly) in the course of the performance of this Agreement.

(e) "Himalaya"

It is hereby expressly agreed that no employee or agent of the Crew Managers (including every sub-contractor from time to time employed by the Crew Managers) shall in any circumstances whatsoever be under any liability whatsoever to the Owners for any loss, damage or delay of whatsoever kind arising or resulting directly or indirectly from any act, neglect or default on his part while acting in the course of or in connection with his employment and, without prejudice to the generality of the foregoing provisions in this Clause 14 (Responsibilities), every exemption, limitation, condition and liberty herein contained and every right, exemption from liability, defence and immunity of whatsoever nature applicable to the Crew Managers or to which the Crew Managers are entitled hereunder shall also be available and shall extend to protect every such employee or agent of the Crew Managers acting as aforesaid and for the purpose of all the foregoing provisions of this Clause 14 (Responsibilities) the Crew Managers are or shall be deemed to be acting as agent or trustee on behalf of and for the benefit of all persons who are or might be his servants or agents from time to time (including sub-contractors as aforesaid) and all such persons shall to this extent be or be deemed to be parties to this Agreement.

15. General Administration

- (a) The Crew Managers shall keep the Owners and, if appropriate, the Company informed in a timely manner of any incident of which the Crew Managers become aware which gives or may give rise to delay to the Vessel or claims or disputes involving third parties.
- (b) The Crew Managers shall handle and settle all claims and disputes arising out of the Crew Management Services hereunder, unless the Owners instruct the Crew Managers otherwise. The Crew Managers shall keep the Owners appropriately informed in a timely manner throughout the handling of such claims and disputes.
- (c) The Owners may request the Crew Managers to bring or defend other actions, suits or proceedings related to the Crew Management Services, on terms to be agreed.

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- (d) The Crew Managers shall have power to obtain appropriate legal or technical or other outside expert advice in relation to the handling and settlement of claims and disputes in relation to Sub-clauses 15(b) and 15(c).
- (e) On giving reasonable notice, the Owners may request, and the Crew Managers shall in a timely manner make available, all documentation, information and records in respect of the matters covered by this Agreement either related to mandatory rules or regulations or other obligations applying to the Owners in respect of the Vessel (including but not limited to STCW 95, the ISM Code and ISPS Code) to the extent permitted by relevant legislation.

On giving reasonable notice, the Crew Managers may request, and the Owners shall in a timely manner make available, all documentation, information and records reasonably required by the Crew Managers to enable them to perform the Crew Management Services.

- (f) The Owners shall arrange for the provision of any necessary guarantee bond or other security.
- (g) Any costs incurred by the Crew Managers in carrying out their obligations according to this Clause 15 (General Administration) shall be reimbursed by the Owners.

**16. Compliance with Laws and Regulations**

The parties will not do or permit to be done anything which might cause any breach or infringement of the laws and regulations of the Flag State, or of the places where the Vessel trades.

**17. Duration of the Agreement**

- (a) This Agreement shall come into effect at the date stated in Box 2 and shall continue until terminated by either party by giving notice to the other; in which event this Agreement shall terminate upon the expiration of the later of the number of months stated in Box 13 or a period of two (2) months from the date on which such notice is received, unless terminated earlier in accordance with Clause 18 (Termination).
- (b) Where the Vessel is not at a mutually convenient port or place on the expiry of such period, this Agreement shall terminate on the subsequent arrival of the Vessel at the next mutually convenient port or place.

**18. Termination**

- (a) Owners' or Crew Managers' default

If either party fails to meet their obligations under this Agreement, the other party may give notice to the party in default requiring them to remedy it. In the event that the party in default fails to remedy it within a reasonable time to the reasonable satisfaction of the other party, that party shall be entitled to terminate this Agreement with immediate effect by giving notice to the party in default.

- (b) Notwithstanding Sub-clause 18(a):

(i) The Crew Managers shall be entitled to terminate the Agreement with immediate effect by giving notice to the Owners if any monies payable by the Owners and/or the owners of any associated vessel, details of which are listed in Annex "D", shall not have been received in the Crew Managers' nominated account within ten (10) days of receipt by the Owners of the Crew Managers' written request, or if the Vessel is repossessed by the Mortgagee(s).

(ii) If either party fails to meet their respective obligations under Clause 5 (Crew Insurances) and Clause 8 (Insurance Policies), the other party may give notice to the party in default requiring them to remedy it within ten (10) days, failing which the other party shall have the right to terminate this Agreement with immediate effect by giving notice to the party in default.

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(iii) If the Owners proceed with the employment of or continue to employ the Vessel in the carriage of contraband, blockade running, or in an unlawful trade, or on a voyage which in the reasonable opinion of the Crew Managers is unduly hazardous or improper, the Crew Managers may give notice of the default to the Owners, requiring them to remedy it as soon as practically possible. In the event that the Owners fail to remedy it within a reasonable time to the satisfaction of the Crew Managers, the Crew Managers shall be entitled to terminate the Agreement with immediate effect by giving notice.

- (c) Extraordinary Termination

This Agreement shall be deemed to be terminated in the case of the sale of the Vessel or if the Vessel becomes a total loss or is declared as a constructive or compromised or arranged total loss or is requisitioned or has been declared missing or, if bareboat chartered, unless otherwise agreed, when the bareboat charter comes to an end.

- (d) For the purpose of Sub-clause 18(c) hereof:

(i) the date upon which the Vessel is to be treated as having been sold or otherwise disposed of shall be the date on which the Vessel's owners cease to be the registered owners of the Vessel;

(ii) the Vessel shall be deemed to be lost either when it has become an actual total loss or agreement has been reached with the Vessel's underwriters in respect of its constructive total loss or if such agreement with the Vessel's underwriters is not reached it is adjudged by a competent tribunal that a constructive loss of the Vessel has occurred; and

(iii) the date upon which the Vessel is to be treated as declared missing shall be ten (10) days after the Vessel was last reported or when the Vessel is recorded as missing by the Vessel's underwriters, whichever occurs first. A missing vessel shall be deemed lost in accordance with the provisions of Sub-clause 18(d)(ii).

- (e) In the event the parties fail to agree the annual budget in accordance with Sub-clause 10(b) or to agree a change of flag in accordance with Sub-clause 7(d), or to agree to a reduction in the Crew Management Fee in accordance with Sub-clause 9(d), either party may terminate this Agreement by giving the other party not less than one month's notice, the result of which will be the expiry of the Agreement at the end of the current budget period or on expiry of the notice period, whichever is the later.

- (f) This Agreement shall terminate forthwith in the event of an order being made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of either party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver or administrator is appointed, or if it suspends payment, ceases to carry on business or makes any special arrangement or composition with its creditors.

- (g) In the event of the termination of this Agreement for any reason other than default by the Crew Managers the crew management fee payable to the Crew Managers according to the provisions of Clause 9 (Crew Management Fee and Expenses), shall continue to be payable for a further period of the number of months stated in Box 14 as from the effective date of termination. If Box 14 is left blank then ninety (90) days shall apply.

- (h) In addition:

(i) the Owners shall continue to pay Crew Support Costs during the said further period of the number of months stated in Box 14; and

(ii) the Owners shall pay an equitable proportion of any Severance Costs which may be incurred, not exceeding the amount stated in Box 15. The Crew Managers shall use their reasonable endeavours to minimise such Severance Costs.

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(iii) The termination of this Agreement shall be without prejudice to all rights accrued due between the parties prior to the date of termination.

19. BIMCO Dispute Resolution Clause

- (a) This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of USD50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

- (b) This Agreement shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Agreement shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgment may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.

In cases where neither the claim nor any counterclaim exceeds the sum of USD50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.

- (c) This Agreement shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Agreement shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.

- (d) Notwithstanding Sub-clauses 19(a), 19(b) or 19(c) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Agreement.

(i) In the case of a dispute in respect of which arbitration has been commenced under Sub-clauses 19(a), 19(b) or 19(c) above, the following shall apply:

(ii) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.

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(iii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.

(iv) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.

(v) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.

(vi) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.

(vii) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.

(viii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.

(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)

- e) If Box 16 in Part I is not appropriately filled in, Sub-clause 19(a) of this Clause shall apply.

Note: Sub-clauses 19(a), 19(b) and 19(c) are alternatives; indicate alternative agreed in Box 16. Sub-clause 19(d) shall apply in all cases.

20. Notices

- a) All notices given by either party or their agents to the other party or their agents in accordance with the provisions of this Agreement shall be in writing and shall, unless specifically provided in this Agreement to the contrary, be sent to the address for that other party as set out in Boxes 17 and 18 or as appropriate or to such other address as the other party may designate in writing.

A notice may be sent by registered or recorded mail, facsimile, electronically or delivered by hand in accordance with this Sub-clause 20(a).

- b) Any notice given under this Agreement shall take effect on receipt by the other party and shall be deemed to have been received:

(i) if posted, on the seventh (7th) day after posting;

(ii) if sent by facsimile or electronically, on the day of transmission; and

(iii) if delivered by hand, on the day of delivery.

And in each case proof of posting, handing in or transmission shall be proof that notice has been given, unless proven to the contrary.

21. Entire Agreement

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This Agreement constitutes the entire agreement between the parties and no promise, undertaking, representation, warranty or statement by either party prior to the date stated in Box 2 shall affect this Agreement. Any modification of this Agreement shall not be of any effect unless in writing signed by or on behalf of the parties.

22. **Third Party Rights**

Except to the extent provided in Sub-clauses 14(d) (Indemnity) and 14(e) (Himalaya), no third parties may enforce any term of this Agreement.

23. **Partial Validity**

If any provision of this Agreement is or becomes or is held by any arbitrator or other competent body to be illegal, invalid or unenforceable in any respect under any law or jurisdiction, the provision shall be deemed to be amended to the extent necessary to avoid such illegality, invalidity or unenforceability, or, if such amendment is not possible, the provision shall be deemed to be deleted from this Agreement to the extent of such illegality, invalidity or unenforceability, and the remaining provisions shall continue in full force and effect and shall not in any way be affected or impaired thereby.

24. **Interpretation**

In this Agreement:

(a) **Singular/Plural**

The singular includes the plural and vice versa as the context admits or requires.

(b) **Headings**

The index and headings to the Clauses and Appendices to this Agreement are for convenience only and shall not affect its construction or interpretation.

(c) **Day**

"Day" means a calendar day unless expressly stated to the contrary.

ANNEX "A" (DETAILS OF VESSEL OR VESSELS)

TO THE BIMCO STANDARD CREW MANAGEMENT AGREEMENT  
CODE NAME: CREWMAN A (COST PLUS FEE) 2009

Date of Agreement:

Name of Vessel(s):

Particulars of Vessel(s):

Sample copy

**ANNEX "B" (DETAILS OF CREW)  
TO THE BIMCO STANDARD CREW MANAGEMENT AGREEMENT  
CODE NAME: CREWMAN A (COST PLUS FEE) 2009**

---

Date of Agreement:

Details of Crew:

| Numbers | Rank | Nationality |
|---------|------|-------------|
|---------|------|-------------|

Sample copy

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**ANNEX "C" (BUDGET)  
TO THE BIMCO STANDARD CREW MANAGEMENT AGREEMENT  
CODE NAME: CREWMAN A (COST PLUS FEE) 2009**

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Date of Agreement:

Managers' initial budget with effect from the commencement date of this Agreement (see Box 2):

Sample copy

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ANNEX "D" (ASSOCIATED VESSELS)  
TO THE BIMCO STANDARD CREW MANAGEMENT AGREEMENT  
CODE NAME: CREWMAN A (COST PLUS FEE) 2009

NOTE: PARTIES SHOULD BE AWARE THAT BY COMPLETING THIS ANNEX "D" THEY WILL BE SUBJECT TO THE PROVISIONS OF SUB-CLAUSE 18(b)(i) OF THIS AGREEMENT.

Date of Agreement:

Details of Associated Vessels:

Sample copy

## H. Annex CREWMAN B 2009

|  <b>CREWMAN B 2009</b><br>STANDARD CREW MANAGEMENT AGREEMENT (LUMP SUM) PART I   |   | PART II<br>CREWMAN B 2009  |  |
|---|---|--|--|
| 1. Place and date of Agreement  | 2. Date of commencement of Agreement (Cl. 2, 9, 16 and 20)  | <b>SECTION 1 – Basis of the Agreement</b><br><br><b>1. Definitions</b><br><br>In this Agreement, save where the context otherwise requires, the following words and expressions shall have the meanings hereby assigned to them.<br><br>"Company" (with reference to the ISM Code and the ISPS Code) means the organization identified in Box 5 or any replacement organization appointed by the Owners from time to time (see Sub-clause 7(b)).<br><br>"Connected Person" means any person connected with the provision and the performance of the Crew Management Services.<br><br>"Crew" means the personnel of the numbers, rank and nationality specified in Annex "B" hereto.<br><br>"Crew Insurances" means insurance of liabilities in respect of crew risks which shall include but not be limited to death, permanent disability, sickness, injury, repatriation, shipwreck unemployment indemnity and loss of personal effects (see Clause 5 (Crew Insurances) and Clause 8 (Insurance Policies) and Boxes 6 and 7).<br><br>"Crew Managers" means the party identified in Box 4.<br><br>"Crew Management Services" means the services specified in Clause 4 (Crew Management) and all other functions performed by the Crew Managers under the terms of this Agreement.<br><br>"Flag State" means the State whose flag the Vessel is flying.<br><br>"ISM Code" means the International Management Code for the Safe Operation of Ships and for Pollution Prevention and any amendment thereto or substitution therefor.<br><br>"ISPS Code" means the International Code for the Security of Ships and Port Facilities and the relevant amendments to Chapter XI of SOLAS and any amendment thereto or substitution therefor.<br><br>"Owners" means the party identified in Box 3.<br><br>"Severance Costs" means the costs which are legally required to be paid to the Crew as a result of the early termination of any contracts for service on the Vessel.<br><br>"SMS" means the Safety Management System (as defined by the ISM Code).<br><br>"STCW 95" means the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended in 1995 and any amendment thereto or substitution therefor.<br><br>"Vessel" means the vessel or vessels details of which are set out in Annex "A" attached hereto. |  |
| 3. Owners (name, place of registered office and law of registry) (Cl. 1)<br>(i) Name:<br>(ii) Place of registered office:<br>(iii) Law of registry:   | 4. Crew Managers (name, place of registered office and law of registry) (Cl. 2)<br>(i) Name:<br>(ii) Place of registered office:<br>(iii) Law of registry:  |  |  |
| 5. The Company (with reference to the ISM/ISPS Codes) (state name and IMO Unique Company Identification number. If the Company is a third party then also state registered office and principal place of business) (Cl. 1)<br>(i) Name:<br>(ii) IMO Unique Company Identification number:<br>(iii) Place of registered office:<br>(iv) Principal place of business:   | 6. Crew insurance arrangements (state "yes" or "no" as agreed) (Cl. 5)<br>(i) Crew Insurances:<br>(ii) Insurance for persons proceeding to sea onboard (Cl. 5(a)):<br><br>7. Optional insurances (state optional insurance(s) as agreed, such as piracy, kidnap and ransom, loss of hire and PD & D) (Cl. 8(a)(iv)) |  |  |
| 8. Interest (state rate of interest to apply after due date to outstanding sums) (Cl. 7(a))   | 9. Crew management lump sum (state monthly amount) (Cl. 9(a))   |  |  |
| 10. Crew Manager's nominated account (Cl. 9(a))   | 11. Crew overtime expenses (state amount covered by lump sum) (Cl. 9(c))<br><br>12. Initial crew transportation costs (state if for Crew Managers' account) (Cl. 9(d))  |  |  |
| 13. Vessel's regular trading area (state port or area) (Cl. 9(d))   | 14. Lay-up period / number of months (Cl. 9(g))   |  |  |
| 15. Minimum contract period (state number of months) (Cl. 16(a))  | 16. Lump sum on termination (state number of months to apply) (Cl. 17(g))   |  |  |
| 17. Severance Costs (state maximum amount) (Cl. 17(h))  | 18. Dispute Resolution (state alternative Cl. 18(a), 18(b) or 18(c); if 18(c) place of arbitration must be stated) (Cl. 18)   |  |  |
| 19. Notices (state full style contact details for serving notice and communication to the Owners) (Cl. 19)  | 20. Notices (state full style contact details for serving notice and communication to the Crew Managers) (Cl. 19)   |  |  |
| It is mutually agreed between the party stated in Box 3 and the party stated in Box 4 that this Agreement consisting of PART I and PART II as well as Annexes "A" (Details of Vessel or Vessels), "B" (Details of Crew) and "C" (Associated Vessels) attached hereto, shall be performed subject to the conditions contained herein. In the event of a conflict of conditions, the provisions of PART I and Annexes "A", "B" and "C" shall prevail over those of PART II to the extent of such conflict but no further. |   |  |  |
| Signature(s) (Owners)   | Signature(s) (Crew Managers)  |  |  |
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SECTION 2 – Services

4. Crew Management

The Crew Managers shall provide suitably qualified Crew who shall comply with the requirements of STCW 95. The provision of the Crew Management Services includes, but is not limited to, the following services:

- (a) selecting, engaging and providing for the administration of the Crew, including, as applicable, payroll arrangements, pension arrangements, tax, social security contributions and other mandatory dues related to their employment payable in each Crew member's country of domicile;
- (b) ensuring that the applicable requirements of the law of the Flag State in respect of rank, qualification and certification of the Crew and employment regulations, such as Crew's tax and social insurance, are satisfied;
- (c) ensuring that all Crew have passed a medical examination with a qualified doctor certifying that they are fit for the duties for which they are engaged and are in possession of valid medical certificates issued in accordance with appropriate Flag State requirements or such higher standard of medical examination as may be agreed with the Owners. In the absence of applicable Flag State requirements the medical certificate shall be valid at the time when the respective Crew member arrives on board the Vessel and shall be maintained for the duration of the service on board the Vessel;
- (d) ensuring that the Crew shall have a common working language and a command of the English language of a sufficient standard to enable them to perform their duties safely;
- (e) ensuring that the Crew, before joining the Vessel, are given proper familiarisation with their duties in relation to the ISM Code;
- (f) instructing the Crew to obey all reasonable orders of the Owners and/or the Company including, but not limited to, orders in connection with safety and navigation, avoidance of pollution and protection of the environment;
- (g) ensuring that no Connected Person shall proceed to sea on board the Vessel without the prior consent of the Owners and/or the Company (such consent not to be unreasonably withheld);
- (h) arranging transportation of the Crew, including repatriation;
- (i) training of the Crew;
- (j) conducting union negotiations; and
- (k) in the event that the Company's drug and alcohol policy requires measures to be taken prior to the Crew joining the Vessel, implementing such measures.

5. Crew Insurances

(Only applicable if agreed according to Box 6)

The Crew Managers shall throughout the period of this Agreement provide the following services:

- (a) arranging Crew Insurances in accordance with the best practice of prudent managers of vessels of a similar type to the Vessel, with sound and reputable insurance companies, underwriters or associations. Insurances for any other persons proceeding to sea on board the Vessel may be separately agreed by the Owners and the Crew Managers (see Box 6);
- (b) ensuring that the Owners are aware of the terms, conditions, exceptions and limits of liability of the insurances in Sub-clause 5(a);

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- (c) ensuring that all premiums or calls in respect of the insurances in Sub-clause 5(a) are paid by their due date;
- (d) if obtainable at no additional cost, ensuring that insurances in Sub-clause 5(a) name the Owners as a joint assured with full cover and, unless otherwise agreed, on terms such that Owners shall be under no liability in respect of premiums or calls arising in connection with such insurances.
- (e) providing written evidence, to the reasonable satisfaction of the Owners, of the Crew Managers' compliance with their obligations under Sub-clauses 5(b), and 5(c) within a reasonable time of the commencement of this Agreement, and of each renewal date and, if specifically requested, of each payment date of the insurances in Sub-clause 5(a).

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**SECTION 3 – Obligations**

**6. Crew Managers' Obligations**

The Crew Managers undertake to use their best endeavours to provide the Crew Management Services as principals and not agents in accordance with sound crew management practice, and to protect and promote the interests of the Owners in all matters relating to the provision of services hereunder.

Provided, however, that in the performance of their management responsibilities under this Agreement, the Crew Managers shall be entitled to have regard to their overall responsibility in relation to all vessels as may from time to time be entrusted to their management and in particular, but without prejudice to the generality of the foregoing, the Crew Managers shall be entitled to allocate available manpower in such manner as in the prevailing circumstances the Crew Managers in their absolute discretion consider to be fair and reasonable.

**7. Owners' Obligations**

The Owners shall:

- (a) pay all sums due to the Crew Managers punctually in accordance with the terms of this Agreement. In the event of payment after the due date of any outstanding sums the Crew Manager shall be entitled to charge interest at the rate stated in Box 8;
- (b) procure that the requirements of the law of the Vessel's Flag State are satisfied and that they, or such other entity as may be appointed by them, are identified to the Crew Managers as the Company as required to comply with the ISM and ISPS Codes. If the Company changes at any time during this Agreement, the Owners shall notify the Crew Managers in a timely manner of the name and contact details of the new organization;
- (c) inform the Crew Managers prior to ordering the Vessel to any excluded or additional premium area under any of the Owners' insurances by reason of war risks and/or piracy or like perils and pay whatever additional costs may properly be incurred by the Crew Managers as a consequence of such orders including, if necessary, the costs of replacing any member of the Crew. Any delays resulting from the negotiation with or replacement of any member of the Crew as a result of the Vessel being ordered to such an area shall be for the Owners' account. Should the Vessel be within an area which becomes an excluded or additional premium area the above provisions relating to cost and delay shall apply;
- (d) agree with the Crew Managers prior to any change of flag of the Vessel and pay whatever additional costs may properly be incurred by the Crew Managers as a consequence of such change. If agreement cannot be reached then either party may terminate this Agreement in accordance with Sub-clause 17(e);
- (e) provide, at no cost to the Crew Managers, in accordance with the requirements of the law of the Flag State, or higher standard, as mutually agreed, adequate Crew accommodation and living standards;
- (f) ensure that the Crew, on joining the Vessel, are properly familiarised with their duties in accordance with the Vessel's SMS and that instructions which are essential to the SMS are identified, documented and given to the Crew prior to sailing;
- (g) unless otherwise agreed, supply and pay for provisions.

**SECTION 4 – Insurance and Lump Sum**

**8. Insurance Policies**

The Owners shall procure that throughout the period of this Agreement:

- (a) at the Owners' expense, the Vessel is insured for not less than its sound market value or entered for its full gross tonnage, as the case may be, for:
    - (i) hull and machinery marine risks (including but not limited to crew negligence) and excess liabilities;
    - (ii) protection and indemnity risks (including but not limited to pollution risks, diversion expenses and, except to the extent insured separately by the Crew Managers in accordance with Clause 5 (Crew Insurances));
- NOTE: If the Crew Managers have not agreed to provide Crew insurances separately in accordance with Clause 5 (Crew Insurances), then such insurances must be included in the protection and indemnity risks cover for the Vessel (see Sub-clause 8(a)(ii) above).
- (iii) war risks (including but not limited to blocking and trapping, protection and indemnity, terrorism and crew risks); and
  - (iv) such other optional insurances as may be agreed (such as piracy, kidnap and ransom, loss of hire and PD & D) (see Box 7).

Sub-clauses 8(a)(i) to 8(a)(iv) in accordance with the best practice of prudent owners of vessels of a similar type to the Vessel, with sound and reputable insurance companies, underwriters or associations ("the Owners' Insurances");

- (b) all premiums and calls on the Owners' Insurances are paid by their due date;
- (c) the Owners' insurances name the Crew Managers and, subject to underwriters' agreement, any third party designated by the Crew Managers as a joint assured, with full cover. It is understood that in some cases, such as protection and indemnity, the normal terms for such cover may impose on the Crew Managers and any such third party a liability in respect of premiums or calls arising in connection with the Owners' Insurances;
- (d) if obtainable at no additional cost, however, the Owners shall procure such insurances on terms such that neither the Crew Managers nor any such third party shall be under any liability in respect of premiums or calls arising in connection with the Owners' Insurances. In any event, on termination of this Agreement in accordance with Clause 16 (Duration of the Agreement) and Clause 17 (Termination), the Owners shall procure that the Crew Managers and any third party designated by the Crew Managers as joint assured shall cease to be joint assured and, if reasonably achievable, that they shall be released from any and all liability for premiums and calls that may arise in relation to the period of this Agreement; and
- (e) written evidence is provided, to the reasonable satisfaction of the Crew Managers, of the Owners' compliance with their obligations under this Clause within a reasonable time of the commencement of the Agreement, and of each renewal date and, if specifically requested, of each payment date of the Owners' Insurances.

**9. Crew Management Lump Sum**

- (a) The Owners shall pay the Crew Managers for their services as crew managers under this Agreement a monthly lump sum in the amount stated in Box 9 which shall be payable in advance, the first monthly lump sum (pro rata if appropriate) being payable on the commencement of this Agreement (see Clause 2 (Commencement and Appointment) and Box 2) and subsequent instalments being payable at the beginning of every calendar month. The crew management lump sum shall be payable to the Crew Managers' nominated account stated in Box 10.
- (b) The lump sum shall include:

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(i) all payments to or on behalf of the Crew in accordance with their contracts of employment, subject to any limitation on overtime hours in accordance with sub-clause 9(c), excluding extra or additional crew payments due solely to the trading of the Vessel in, to or through areas that are hazardous due to war risks and/or piracy or like perils, as they may be legally entitled;

(ii) in the event the Crew Managers are providing insurance in accordance with Clause 5 (Crew Insurances) all costs incurred in providing insurance cover including any deductibles;

(iii) the cost of obtaining all documentation necessary for the Crew's employment including, but not limited to, medical and vaccination certificates, passports, visas, seamen's books and licences, in compliance with the rules and regulations in force at the time of the commencement of the Agreement and at each subsequent annual review;

(iv) the cost of transportation of the Crew to and from the Vessel including hotel expenses and food while travelling, other than the Crew costs set out in sub-clause 9(d).

(v) port disbursements and fees in respect of Crew matters;

(vi) the cost of Crew mail and Crew's communications from the Vessel;

(vii) if agreed (see Sub-clause 7(g)), the cost of provisions for the Crew.

The Crew Managers and the Owners shall respectively, at the commencement and termination of this Agreement, take over and pay for all unbreached provisions on board the Vessel at a price to be mutually agreed;

(viii) usual working clothes; and

(ix) all other costs and expenses necessarily incurred by the Crew Managers in providing the Crew Management Services.

(c) The amount of Crew overtime covered by the lump sum shall be as stated in Box 11. If overtime exceeds that amount the Owners shall pay for the excess at the rates set out in Annex B.

(d) Unless stated in Box 12, the Owners shall bear the costs of the first Crew joining the Vessel at the commencement of this Agreement. Such costs shall include standby costs, travel insurance, the cost of transportation of the Crew from the point of departure from their country of domicile to the Vessel including hotel expenses and food while travelling.

All travelling expenses are based on the Vessel trading regularly to the port or area shown in Box 13. Should the Crew Managers have to pay any additional travelling expenses by reason of the Vessel not calling regularly at the above port or area, any excess travelling costs/expenses shall be charged to the Owners separately, on terms to be agreed.

(e) Any invoices submitted by the Crew Managers for expenditure properly and reasonably incurred by them in the discharge of their duties under this Agreement and not included in the Crew Management Services but payable by the Owners including, but not limited to, consequential costs of lay up or repairs (Sub-clause 9(g)), excess overtime (Sub-clause 9(c)) and the initial Crew transportation costs (Sub-clause 9(d)) shall be paid by the Owners at the time of the payment of the next lump sum due under Sub-clause 9(a) or, in case of termination of the Agreement, before disembarkation of the Crew.

(f) The lump sum shall be renegotiated annually in accordance with the following provisions:

(i) Not less than three (3) months before the anniversary date of the commencement of this Agreement specified in Box 2, the Crew Managers shall submit to the Owners a proposed lump sum figure to be applicable for the forthcoming year;

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(ii) The Owners shall state to the Crew Managers in a timely manner but in any event within one month of presentation whether or not they agree to the proposed lump sum. The parties shall negotiate in good faith and if they fail to agree on the lump sum either party shall have the right to terminate this Agreement in accordance with Sub-clause 17(e).

(g) If the Owners decide to layup the Vessel and such layup lasts for more than the number of months stated in Box 14, an appropriate reduction of the lump sum for the period exceeding such period until one month before the Vessel is again put into service shall be mutually agreed between the parties. Consequential costs of reduction and reinstatement of the Crew shall be for the Owners' account. If agreement cannot be reached then either party may terminate this Agreement in accordance with Sub-clause 17(e).

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(c) Extraordinary Termination

This Agreement shall be deemed to be terminated in the case of the sale of the Vessel or if the Vessel becomes a total loss or is declared as a constructive or compromised or arranged total loss or is requisitioned or has been declared missing or, if bareboat chartered, unless otherwise agreed, when the bareboat charter comes to an end.

(d) For the purpose of Sub-clause 17(c) hereof:

(i) the date upon which the Vessel is to be treated as having been sold or otherwise disposed of shall be the date on which the Vessel's owners cease to be the registered owners of the Vessel;

(ii) the Vessel shall be deemed to be lost either when it has become an actual total loss or agreement has been reached with the Vessel's underwriters in respect of its constructive total loss or if such agreement with the Vessel's underwriters is not reached it is adjudged by a competent tribunal that a constructive loss of the Vessel has occurred; and

(iii) the date upon which the Vessel is to be treated as declared missing shall be ten (10) days after the Vessel was last reported or when the Vessel is recorded as missing by the Vessel's underwriters, whichever occurs first. A missing vessel shall be deemed lost in accordance with the provisions of Sub-clause 17(d)(iii).

(e) In the event the parties fail to agree the proposed lump sum in accordance with Sub-clause 9(f)(ii) or to agree a change of flag in accordance with Sub-clause 7(d), or to agree to a reduction of the lump sum in accordance with Sub-clause 9(g), either party may terminate this Agreement by giving the other party not less than one month's notice, the result of which will be the expiry of the Agreement at the end of the current budget period or on expiry of the notice period, whichever is the later.

(f) This Agreement shall terminate forthwith in the event of an order being made or resolution passed for the winding up, dissolution, liquidation or bankruptcy of either party (otherwise than for the purpose of reconstruction or amalgamation) or if a receiver or administrator is appointed, or if it suspends payment, ceases to carry on business or makes any special arrangement or composition with its creditors.

(g) In the event of the termination of this Agreement for any reason other than default by the Crew Managers the lump sum payable to the Crew Managers according to the provisions of Clause 9 (Crew Management Lump Sum), shall continue to be payable from the date the Crew reach their country of domicile for a further period of the number of months stated in Box 16. If Box 16 is left blank then ninety (90) days shall apply.

(h) In addition, the Owners shall also pay an equitable proportion of such Reasonable Severance Costs as the Crew Managers can prove that they have incurred to the extent that such Severance Costs exceed the lump sum for the number of months stated in Box 17. The Crew Managers shall use their best endeavours to minimise such Severance Costs which, in any event, shall not exceed a maximum sum equivalent to the Crew's basic wages for the number of months stated in Box 15.

(i) The termination of this Agreement shall be without prejudice to all rights accrued due between the parties prior to the date of termination.

**18. BIMCO Dispute Resolution Clause**

(a) This Agreement shall be governed by and construed in accordance with English law and any dispute arising out of or in connection with this Agreement shall be referred to arbitration in London in accordance with the Arbitration Act 1996 or any statutory modification or re-enactment thereof save to the extent necessary to give effect to the provisions of this Clause.

The arbitration shall be conducted in accordance with the London Maritime Arbitrators Association (LMAA) Terms current at the time when the arbitration proceedings are commenced.

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The reference shall be to three arbitrators. A party wishing to refer a dispute to arbitration shall appoint its arbitrator and send notice of such appointment in writing to the other party requiring the other party to appoint its own arbitrator within 14 calendar days of that notice and stating that it will appoint its arbitrator as sole arbitrator unless the other party appoints its own arbitrator and gives notice that it has done so within the 14 days specified. If the other party does not appoint its own arbitrator and give notice that it has done so within the 14 days specified, the party referring a dispute to arbitration may, without the requirement of any further prior notice to the other party, appoint its arbitrator as sole arbitrator and shall advise the other party accordingly. The award of a sole arbitrator shall be binding on both parties as if he had been appointed by agreement.

Nothing herein shall prevent the parties agreeing in writing to vary these provisions to provide for the appointment of a sole arbitrator.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the LMAA Small Claims Procedure current at the time when the arbitration proceedings are commenced.

(b) This Agreement shall be governed by and construed in accordance with Title 9 of the United States Code and the Maritime Law of the United States and any dispute arising out of or in connection with this Agreement shall be referred to three persons at New York, one to be appointed by each of the parties hereto, and the third by the two so chosen; their decision or that of any two of them shall be final, and for the purposes of enforcing any award, judgment may be entered on an award by any court of competent jurisdiction. The proceedings shall be conducted in accordance with the rules of the Society of Maritime Arbitrators, Inc.

In cases where neither the claim nor any counterclaim exceeds the sum of USD 50,000 (or such other sum as the parties may agree) the arbitration shall be conducted in accordance with the Shortened Arbitration Procedure of the Society of Maritime Arbitrators, Inc. current at the time when the arbitration proceedings are commenced.

(c) This Agreement shall be governed by and construed in accordance with the laws of the place mutually agreed by the parties and any dispute arising out of or in connection with this Agreement shall be referred to arbitration at a mutually agreed place, subject to the procedures applicable there.

(d) Notwithstanding Sub-clauses 18(a), 18(b) or 18(c) above, the parties may agree at any time to refer to mediation any difference and/or dispute arising out of or in connection with this Agreement.

(i) In the case of a dispute in respect of which arbitration has been commenced under Sub-clauses 18(a), 18(b) or 18(c) above, the following shall apply:

(ii) Either party may at any time and from time to time elect to refer the dispute or part of the dispute to mediation by service on the other party of a written notice (the "Mediation Notice") calling on the other party to agree to mediation.

(iii) The other party shall thereupon within 14 calendar days of receipt of the Mediation Notice confirm that they agree to mediation, in which case the parties shall thereafter agree a mediator within a further 14 calendar days, failing which on the application of either party a mediator will be appointed promptly by the Arbitration Tribunal ("the Tribunal") or such person as the Tribunal may designate for that purpose. The mediation shall be conducted in such place and in accordance with such procedure and on such terms as the parties may agree or, in the event of disagreement, as may be set by the mediator.

(iv) If the other party does not agree to mediate, that fact may be brought to the attention of the Tribunal and may be taken into account by the Tribunal when allocating the costs of the arbitration as between the parties.

(v) The mediation shall not affect the right of either party to seek such relief or take such steps as it considers necessary to protect its interest.

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(vi) Either party may advise the Tribunal that they have agreed to mediation. The arbitration procedure shall continue during the conduct of the mediation but the Tribunal may take the mediation timetable into account when setting the timetable for steps in the arbitration.

(vii) Unless otherwise agreed or specified in the mediation terms, each party shall bear its own costs incurred in the mediation and the parties shall share equally the mediator's costs and expenses.

(viii) The mediation process shall be without prejudice and confidential and no information or documents disclosed during it shall be revealed to the Tribunal except to the extent that they are disclosable under the law and procedure governing the arbitration.

(Note: The parties should be aware that the mediation process may not necessarily interrupt time limits.)

(e) If Box 18 in Part I is not appropriately filled in, Sub-clause 18(a) of this Clause shall apply.

Note: Sub-clauses 18(a), 18(b) and 18(c) are alternatives; indicate alternative agreed in Box 18. Sub-clause 18(d) shall apply in all cases.

**19. Notices**

(a) All notices given by either party or their agents to the other party or their agents in accordance with the provisions of this Agreement shall be in writing and shall, unless specifically provided in this Agreement to the contrary, be sent to the address for that other party as set out in Boxes 19 and 20 or as appropriate or to such other address as the other party may designate in writing.

A notice may be sent by registered or recorded mail, facsimile, electronically or delivered by hand in accordance with this Sub-clause 19(a).

(b) Any notice given under this Agreement shall take effect on receipt by the other party and shall be deemed to have been received:

(i) if posted, on the seventh (7th) day after posting;

(ii) if sent by facsimile or electronically, on the day of transmission; and

(iii) if delivered by hand, on the day of delivery.

And in each case proof of posting, handing in or transmission shall be proof that notice has been given, unless proven to the contrary.

**20. Entire Agreement**

This Agreement constitutes the entire agreement between the parties and no promise, undertaking, representation, warranty or statement by either party prior to the date stated in Box 2 shall affect this Agreement. Any modification of this Agreement shall not be of any effect unless in writing signed by or on behalf of the parties.

**21. Third Party Rights**

Except to the extent provided in Sub-clauses 13(d) (Indemnity) and 13(e) (Himalaya), no third parties may enforce any term of this Agreement.

**22. Partial Validity**

If any provision of this Agreement is or becomes or is held by any arbitrator or other competent body to be illegal, invalid or unenforceable in any respect under any law or jurisdiction, the provision shall be deemed to be amended to the extent necessary to avoid such illegality, invalidity or unenforceability, or, if such amendment is not possible,

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the provision shall be deemed to be deleted from this Agreement to the extent of such illegality, invalidity or unenforceability, and the remaining provisions shall continue in full force and effect and shall not in any way be affected or impaired thereby.

**23. Interpretation**

In this Agreement:

(a) Singular/Plural

The singular includes the plural and vice versa as the context admits or requires.

(b) Headings

The index and headings to the Clauses and Appendices to this Agreement are for convenience only and shall not affect its construction or interpretation.

(c) Day

"Day" means a calendar day unless expressly stated to the contrary.

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ANNEX "A" (DETAILS OF VESSEL OR VESSELS)

TO THE BIMCO STANDARD CREW MANAGEMENT AGREEMENT  
CODE NAME: CREWMAN B (LUMP SUM) 2009

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Date of Agreement:

Name of Vessel(s):

Particulars of Vessel(s):

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ANNEX "B" (DETAILS OF CREW)

TO THE BIMCO STANDARD CREW MANAGEMENT AGREEMENT  
CODE NAME: CREWMAN B (LUMP SUM) 2009

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Date of Agreement:

Details of Crew:

| Numbers | Rank | Nationality |
|---------|------|-------------|
|---------|------|-------------|

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ANNEX "C" (ASSOCIATED VESSELS)

TO THE BIMCO STANDARD CREW MANAGEMENT AGREEMENT  
CODE NAME: CREWMAN B (LUMP SUM) 2009

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NOTE: PARTIES SHOULD BE AWARE THAT BY COMPLETING THIS ANNEX "C" THEY WILL BE SUBJECT TO THE PROVISIONS OF SUB-CLAUSE 17(b)(i) OF THIS AGREEMENT.

Date of Agreement:

Details of Associated Vessels:

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**I. Annex Evidence of financial security under Regulation 2.5, paragraph 2  
(Appendix A2-I of the MLC)**

**APPENDIX A2-I**

**Evidence of financial security under Regulation 2.5, paragraph 2**

The certificate or other documentary evidence referred to in Standard A2.5.2, paragraph 7, shall include the following information:

- (a) name of the ship;
- (b) port of registry of the ship;
- (c) call sign of the ship;
- (d) IMO number of the ship;
- (e) name and address of the provider or providers of the financial security;
- (f) contact details of the persons or entity responsible for handling seafarers' requests for relief;
- (g) name of the shipowner;
- (h) period of validity of the financial security; and
- (i) an attestation from the financial security provider that the financial security meets the requirements of Standard A2.5.2.

**J. Annex Evidence of financial security under Regulation 4.2 (Appendix A4-I of the MLC)**

**APPENDIX A4-I**

**Evidence of financial security under Regulation 4.2**

The certificate or other documentary evidence of financial security required under Standard A4.2.1, paragraph 14, shall include the following information:

- (a) name of the ship;
- (b) port of registry of the ship;
- (c) call sign of the ship;
- (d) IMO number of the ship;
- (e) name and address of the provider or providers of the financial security;
- (f) contact details of the persons or entity responsible for handling seafarers' contractual claims;
- (g) name of the shipowner;
- (h) period of validity of the financial security; and
- (i) an attestation from the financial security provider that the financial security meets the requirements of Standard A4.2.1.