



## Improving Yacht Crew Retention

Quaynote  
communications

Wycc  
INSURANCE

stream  
avocats & solicitors

### Paris

4, square Édouard VII  
75009 Paris  
+33 (0)1 53 76 91 00

### Le Havre

15, quai Lamandé  
76600 Le Havre  
+33 (0)2 35 22 18 88

### Marseille

24, cours Pierre Puget  
13006 Marseille  
+33 (0)4 86 68 49 14

### Bordeaux

30, allées de Tourny  
33000 Bordeaux  
+33 (0)5 40 25 69 11

[www.stream.law](http://www.stream.law)



**Session 4: What is the impact of the MLC and local law implementation?**

***MLC shipowner liability: a reminder of how it works***

# About us

Since 2002, **Stream** (formerly Ince & Co France) has been assisting its clients, in **France** and **abroad**, in both advisory and litigation matters.

With offices in Paris, Le Havre, Marseille and Bordeaux, our firm has nearly **40 lawyers**.



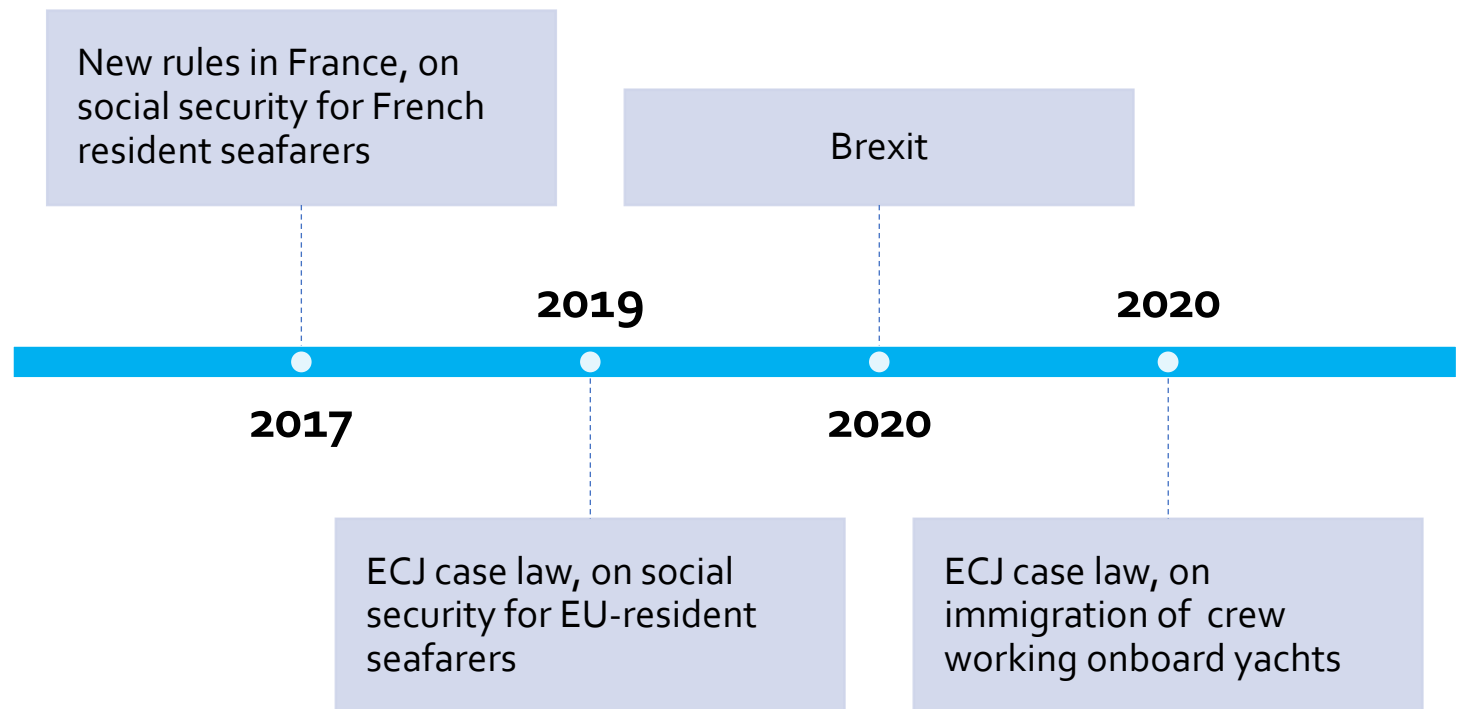
## --- The yachting and social team

**4** partners + a **team** of associate lawyers

Cases with high financial stakes (> €15 million)

Strong and cross-section expertise in the yachting sector: seafarers' employment, sale and purchase, construction, tax, customs, litigation, insurance, arrest of vessel, immigration, compliance, etc.

## Recent changes in EU/French rules



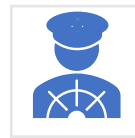
# MLC shipowner liability: how does it work?



## Scope

MLC 2006, art. II, 6:

*"Except as expressly provided otherwise, this Convention applies to **all ships**, whether **publicly or privately owned**, ordinarily engaged in **commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build** such as dhows and junks. This Convention **does not apply to warships or naval auxiliaries.**"*



## Shipowner

MLC 2006, art. II, 1:

*"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."*



## Shipowner's liabilities

- Repatriation
- Compensation for the ship's loss or foundering
- Medical care
- Payment of wages in case of sickness
- Burial expenses

## Social security

- MLC 2006, standard A4.5:
- *"1. The branches to be considered with a view to achieving progressively comprehensive social security protection under Regulation 4.5 are: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit, complementing the protection provided for under Regulations 4.1, on medical care, and 4.2, on shipowners' liability, and under other titles of this Convention."*

Public *or* private scheme?

Public *and* private scheme?



# Social security: State or private scheme?

## Rules in the EU

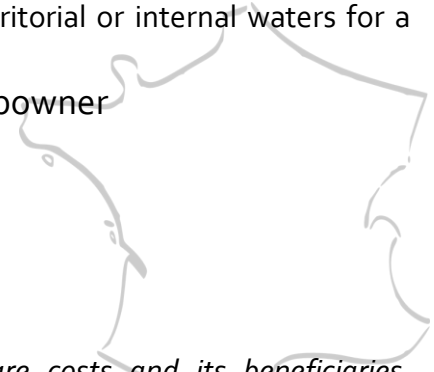
- **EU flag**
  - EU Regulation of 29 April 2004, art. 11, 4:
  - *“For the purposes of this Title, an activity as an employed or self-employed person normally pursued on board a vessel at sea flying the flag of a Member State shall be deemed to be an activity pursued in the said Member State. However, a person employed on board a vessel flying the flag of a Member State and remunerated for such activity by an undertaking or a person whose registered office or place of business is in another Member State shall be subject to the legislation of the latter Member State if he/she resides in that State. The undertaking or person paying the remuneration shall be considered as the employer for the purposes of the said legislation.”*
- **Non-EU flag** + EU-resident seafarer + EU-based employer
  - ECJ, Ruling of 8 May 2019

## Impact of Brexit

## Impact of “Schengen rules”

## Rules in France

- Non-EU flag + seafarer residing in France
  - Notion of residence:
    - possessing residence in France or upon the condition of a principal stay, or
    - seafarers who reside on a vessel: presence of the seafarer in territorial or internal waters for a period of 6 months (assessed on a 12-month basis).
  - Irrelevant criteria: nationality of crew, location of employer/shipowner
  
- Registration with ENIM or equivalent private social security
  - Ex. of equivalent private social security: WYCC
  - Notion of "equivalent":
    - "As a minimum, it must provide cover for the seafarer's healthcare costs and its beneficiaries, compensatory salary allowances in the event of illness or accident, whether work-related or not, permanent disability compensation and old-age benefits including reversionary pension and family allowances particularly for child maintenance and childcare"*
  - No matter the level of cover and the contribution?
  
- Heavy sanctions: concealed work (6 month-salary + high fines + jail), arrest of vessel





# Social security: State or private scheme?



MALTESE FLAG



ITALIAN NATIONAL



SEAFARER'S RESIDENCE  
IN ITALY



EMPLOYER NOT LOCATED  
IN ITALY



MALTESE RULES  
AS REGARDS SOCIAL  
SECURITY



MALTESE FLAG



ITALIAN NATIONAL



SEAFARER'S RESIDENCE  
IN SPAIN



EMPLOYER ALSO  
LOCATED IN SPAIN



SPANISH RULES  
AS REGARDS SOCIAL  
SECURITY



CAYMAN ISLANDS FLAG



POLISH NATIONAL



SEAFARER'S RESIDENCE IN  
POLAND



EMPLOYER LOCATED IN  
LITHUANIA



POLISH RULES  
AS REGARDS SOCIAL  
SECURITY



MARSHALL ISLANDS FLAG



US NATIONAL



SEAFARER'S RESIDENCE IN  
FRANCE > 6 MONTHS



EMPLOYER LOCATED IN THE  
ISLE OF MAN



ENIM / EQUIVALENT  
SOCIAL PROTECTION

# Social security: State or private scheme?



## A tool of retention

### DEFINITION

Employee benefits are provided to employees over and above salaries and wages

**4 major types:** medical insurance, life insurance, retirement plans, and disability insurance

### Types of employee benefits

- Benefits at work  
working hours & leave, skills development, food & beverage, and employee clubs, activities & gifts
- Benefits for health  
health and wellness and healthcare (Physio, Chiro, Psychologist support, Fertility treatments...)
- Benefits for financial security  
Pension plan, insurances (Medical, Life, disability), Bonus, Tax advisor
- Lifestyle benefits  
Mobility, Childcare, legal services...

# Social security: State or private scheme?

## A tool of retention

Different generations of workers want different things



### BABYBOOMERS

- 1 Pension
- 2 Working Hours & Leave
- 3 Healthcare
- 4 Health & Wellness
- 5 Insurance



### GENERATION X

- 1 Working Hours & Leave
- 2 Health & Wellness
- 3 Pension
- 4 Skills Development
- 5 Healthcare



### MILLENNIALS

- 1 Working Hours & Leave
- 2 Health & Wellness
- 3 Skills Development
- 4 Pension
- 5 Healthcare



### GENERATION Z

- 1 Working Hours & Leave
- 2 Health & Wellness
- 3 Skills Development
- 4 Healthcare
- 5 Pension

# Social security: State or private scheme?



## A tool of retention

### **STANDARD PACKAGE:**

Salary, Accommodation, Food and catering, Vacation, Car

### **RELOCATION “Assistance”**

- Administrative steps (Residence permit, Social security, Family allocation, Driver’s licence, Vehicule registration)
- Housing (Hotel/Home Search/purchase)
- Installation setting in, school search, opening bank account
- Departure, home sale or rental

### **WEALFARE PACKAGE in Yachting**

- HEALTHCARE PLAN / Crew Welfare
  - In/out patient
  - Dental care
  - Vision care
  - Routine treatments
- LIFE
- DISABILITY
- SICKNESS BENEFITS
- MATERNITY LEAVE
- PENSION PLAN
- FAMILY



**Frédérique Heurtel**  
Associée  
*Avocate au Barreau de Paris*

✉ [frederique.heurtel@stream-law.com](mailto:frederique.heurtel@stream-law.com)

☎ +33 (0)7 50 45 46 28  
+33 (0)1 53 76 91 00

📍 4 square Édouard VII  
75009 Paris



**Amélie de Franssu**  
Collaboratrice  
*Avocate au Barreau de Paris*

✉ [amelie.defranssu@stream-law.com](mailto:amelie.defranssu@stream-law.com)

☎ +33 (0)6 72 80 39 50  
+33 (0)1 53 76 91 36

📍 4 square Édouard VII  
75009 Paris



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