

# Transcript

## Captain's Breakfast

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### Part 2

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## START AUDIO

Tork Buckley: Good morning everybody and welcome to our second session on the captain's breakfast. We are talking this time about something that is a necessity not a luxury which is having a flag.

We have a wide variety of flags here who are each going to give a small presentation on what their flag does and then we are going to go to Q&A and we are going to try and have a fairly active Q&A session. I know the presenters will keep their presentations nice and brief to leave lots of time for pertinent questions from the captains in the audience.

For now I'm going to pass over to Jean Jacques Ollu of Holman Fenwick Willan who is also going to provide an introduction and he is also going to tell you something albeit briefly about a new problem facing France and TVA. Jean Jacques.

Jean Jacques Ollu: I am happy to be here with you today. It was not very easy to come to Monaco. I would like to start with something a little disconcerting: VAT. You will see that it is not totally foreign to the debate that we are having today about the open registry.

If I wanted to say a few words about VAT, it is because the European Commission has just launched an infringement procedure against France. You know that the French VAT system is based on a very

broad, very flexible interpretation in the 8<sup>th</sup> VAT Directive. This had led the French authorities to assimilate pleasure boats used commercially, with seagoing vessels exempt from VAT.

The European Commission considers that this interpretation of the 8<sup>th</sup> VAT Directive by France violates the text, insofar as the directive reserves the VAT exemptions for sea-going vessels. So, if this procedure goes to completion, and it will go to completion - it is now well on its way - if France does not comply with the directive it has received from the European Commission, the matter will be referred to the Court of Justice. This development calls into question the commercial status and the VAT exemptions related thereto, of all ships that are not regarded as sea-going ships, and I refer in particular to all those whose range is limited to 60 nautical miles.

This is therefore an extremely important aspect that we have to watch very closely, because it is likely to call into question many schemas, ownership structures. This also concerns naturally the registries because the choice of the register - we will come back to this later - is to some extent, related to these aspects of the VAT.

Very briefly, a few words to really introduce our topic for today. Then, I will turn over the floor to the representatives of the various registries that are at my side.

It is something interesting in itself, if you think about it for a moment, that makes you wonder what the most appropriate registry for the operation of your vessel is. Historically, a registry, and thus the flag associated with it, is intimately connected with ownership; the nationality of the ship owner. It's less true today with the European Community. But speaking only about the French flag, there have

been and still are some requirements in terms of nationality, for the shareholders and the crew, with all of the associated regulations.

However, so-called open-registry flags appeared that others call flags of convenience – note the connotation - and which are based on a completely opposite principle from that which I presented a moment ago, since a registration flag, by hypothesis, is accessible to any owner, regardless of their nationality. So today we are wondering, and the owners are wondering if this is wrong, if it is Saint Vincent in the Grenadines or the French international registry, then is the flag of the Cayman Islands most suitable for the operation for which my ship is intended?

Each one will speak about this, but I just wanted to tell you that when we are asked, as a lawyer, to advise our clients, the primary criteria are:

- firstly the reputation of the registry is extremely important because some exotic registries - that I will not mention and which are also not represented here - catch the eye or the attention of local authorities, so in general, we avoid recommending these flags;
- the reputation of the registry means that the country where this registry is found belongs to most international conventions in terms of safety and labour laws, that the registry should have a good reputation, also vis-à-vis the crew - it is extremely important and we will have the opportunity to return to this point;
- the registry also must be available, very responsive: when we register a boat, time constraints arise and generally we need someone to answer the phone;

- finally, the registry must also interpret the regulations and apply them without indulgence, rather taking into account the particularities of pleasure boats. Because we sometimes see the inspectors of certain registries apply extremely strictly - understandably - their regulations, but without taking into account any very specific, usage-specific issues that arise in respect of pleasure crafts.

So, by way of introduction, I wanted to tell you about the VAT first. We can come back to this later if you wish, and about the registries. I will now give the floor to the representative for the registry for the Island of Malta.

Ann Fenech:

Thank you very much indeed. Well good morning ladies and gentlemen, thank you Jean.

I've been described as a representative of the Malta Registry in fact I should tell you I'm not a representative of the Malta Registry. I am a lawyer, I'm the managing partner of Fenech & Fenech advocates in Malta. Fenech & Fenech is Malta's premier shipping law firm, a maritime law firm. We are 70 people but we do a number of other things apart from shipping. However, it is the only law firm on the island with three separate shipping departments one of which is registration and ship finance.

So because a fair amount of our activity relates to ships and shipping I was asked very kindly to come and give my views on what the situation is like in Malta. I also called the Malta Maritime Authority

which is the regulator in Malta and they were very happy that I should actually come and say a few words about the flag.

The Maltese maritime flag is in fact the second largest in Europe not many people know that and it is the seventh largest worldwide. Now the Malta flag actually rose to the level which it enjoys today as a result of the amendments which were carried out to our shipping law in the 1980's. That was when the flag became attractive to both the owners and the financiers. I say owners and financiers specifically because of course a flag is only successful if the financiers who are actually behind the financing of the yacht are comfortable with the flag. They need to ensure that the law of the flag gives them the security that they require.

With Malta's full membership to the European Union the Maltese maritime flag obtained another brownie point shall we say. It became a European flag and a number of owners today look for a European flag because it is very important for them to fly the European flag. When we did become owners of the European Union suddenly Malta became also very attractive to a segment of shipping, which is or was registered in the Caribbean and here I'm talking about cruise line operators.

So today we have seen a move of cruise line operators traditionally registered in the Caribbean, which are now registering their vessels in Malta, and I talk about Royal Caribbean, etc.

Now has a result of substantial advantages, which there are under the Malta maritime flag (which I'll be talking to you about in a moment), the Malta maritime flag has grown to 37 million tons which is a substantial tonnage and today some of the world's most

important commercial fleets are registered under the Malta flag, such as CMACGM, the Itson Group, Thenamaris etc. The list is endless.

However and importantly, the advantages of registering a yacht under the Malta flag were advantages which were only given out to vessels over 1,000 gross tons. That changed substantially in 2006 when the advantages previously for vessels over 1,000 gross tons were opened up to vessels under 1,000 gross tons which is of course when people involved in the super yacht industry started to look at Malta.

So what are the advantages then? Well the advantages are quite a few. First of all the yacht can be registered in the name of an individual or it can be named of a company. If it is registered in the name of a company then that company does not have to be registered in Malta. You can have a company or a foreign owner registered away from Malta as long as the foreign individual or the foreign company actually has a Maltese representative.

There are no restrictions on nationality of crew, no restrictions on nationality of the master and there are no trade restrictions.

Importantly registration can take place outside normal office hours and this we find is a huge advantage because for persons coming from Europe it is all very well and good. But very often the financing of these yachts, super yachts is raised either in the United States or in the Far East and when that happens, when the mortgagees, when the financiers need to register their mortgage that registration needs to take place in their real time which is normally outside the normal EU time zone.

So thankfully our administration which is very sensitive to the commercial realities that exist has got absolutely no problem with going down to the registry and having a vessel, a super yacht registered at two o'clock in the morning if the financing is coming out of New York or at 11 o'clock at night if the other way round. At 11 o'clock at night if the financing is coming from New York or at two o'clock in the morning if the financing is being raised in Hong Kong that is a very big advantage. On a practical level we have found that to be something that people look for and appreciate.

For the more substantial advantages of course the most substantial advantage is that the owner of a commercially registered super yacht does not pay any tax on income but instead pays a tonnage tax which is a flat rate tax depending on the tonnage of the vessel. It is an annual fee so owners know exactly how much they are going to pay right at the beginning and nine times out of ten they are much happier with that scenario than of course having to pay tax on income.

Now I spoke earlier about the importance of the flag for the financier. No bank of repute is going to finance a super yacht costing several millions; multiples of many millions; if he knows that if things may go wrong, if things go belly up (which unfortunately we have seen cases of this over the last couple of years). We say that in Malta Maltese law offers the financier a tremendous amount of security. Well nothing was could have shown that better than in last couple of years where a number of owners unfortunately were not in a position to pay and consequently these mortgagees had to move in.

Now the financier and the Maltese law are offered a tremendous amount of protection because a mortgage in Malta is the equivalent

of a judgement. And in our experience it is very important that the owner convinces the financier of the reliability of the flag in the eventuality that things go wrong.

Now in Malta as I said the mortgage is the equivalent of a judgement which in real terms means what? In real terms it means that if things go wrong and if the owner defaults on his payments the mortgagee does not have the headache, huge headache sometimes of commencing an action, going through the law courts fighting a lawsuit. They can go straight to enforcing the mortgage without any of that. How are we doing for time talk?

Tork Buckley: A few minutes more.

Ann Fenech: A few minutes more okay. So that means we can go directly to enforcement. The vessel can either be sold in a judicial sale by auction the disadvantage with a judicial sale is that you do not have any control over the price. When you go to a judicial sale by auction you can have a buyer who can actually takes the yacht for practically nothing. So that is a disadvantage but the assurance with a judicial sale is that when the vessel is sold then it is sold without any of the vessel's debts so that is attractive to the buyer.

Or the mortgagee can sell privately, not in a judicial sale; that is when the mortgagee has full control over the price that he can sell the vessel for. The disadvantage with that is that the vessel is not sold free from any debts.

So as practitioners and I were very heavily involved in the drafting of the law, we have convinced the authorities to come up with what is called a court approved private sale. The advantage is that the mortgagee can negotiate the price that will be a good price, goes to court and get the court to approve it. With that court approval the vessel is sold free and unencumbered. So that is really having the best of both worlds.

It is all of this package basically which has encouraged major financiers like DNV, Fortis, HSBC, Berenburg, Bank of New York, Sao Paolo and Taser, the list is endless, and actually support owners who want to register their vessel under the Malta flag.

The procedure for registrations is fairly straightforward; there is a distinction between vessels being registered as pleasure yachts and vessels being registered as commercial yachts. Of course when vessels are being registered as a commercial yacht there are a number of other documents that are required. Such as the survey report which has to be presented on provisional registration by class surveyor, which would essentially state that the vessel is in line with and satisfies all the requirements of our commercial yacht code.

Then of course there are a number of other certificates that would be necessary depending on the tonnage of the vessel. If we are looking at a vessel over 300 gross tonnes we would require the international safety radio certificate. If we are looking at a vessel over 400 gross tonnes we are looking at the international oil pollution prevention. A yacht over 500 gross tonnes we are looking at the ISM certification and the list goes on.

But generally speaking the procedure itself is quick, it is swift and I must admit the service providers together with the administration is very switched on to assisting the yacht owner achieve the registration of the yacht as quickly, as time efficient manner as possible. We are very aware of the high net worth individual, of the requirements of this type of high net worth individual as Tina so beautifully explained to us; it was a first class presentation. More importantly the administration is willing to cooperate and be a partner.

Finally we have spoken about the advantages and these are advantages in terms of commercial registration but then of course we do have high net worth individuals who do not want to register their vessels commercially and they are after their registration for pure pleasure. That is where the VAT issue comes into the equation if they want the freedom to navigate in EU territorial waters.

To cut a very long story short because I am very aware of the time here, the Maltese law offers a structure whereby the effective VAT rate is 5.4% instead of 18%. I am quite sure I probably don't have any more time do I? No. He nods his head very politely but if there is anybody interested in knowing how that can be affected it would be my pleasure to answer the questions during question time. Thank you very much indeed.

Tork Buckley: Thank you Anne. I would like to introduce Madame Dominique Jones from the Luxembourg registry who is going to explain something from the Luxembourg viewpoint, thank you.

Dominique Jones: Thank you. Well actually I am not exactly from the Luxembourg registry but from a company called Navilux which has been operating in Luxembourg since 1995, and I happen to be the managing director of that company. Of course I called the Maritime Authority and told them about this presentation and they were very happy for me to come and talk in their place.

What I am going to try and explain is why Luxembourg which is a small country based right in the middle of the continent with no seas around it can be a serious alternative to any other types of flag. I know that recently a journalist from Altendex marvelled on the fact that there was a Luxembourg flag when the only water if I can say in Navilux was the Moselle River.

So why is the Luxembourg flag a serious alternative in relation to today's market standards? Well there are three points there; Luxembourg is an international financial centre. The maritime industry has been present in Luxembourg for 20 years and there are quite a few benefits to the Luxembourg flag, which are the points which I am going to develop now.

You may know, I am sure all the owners of the yachts know, that Luxembourg has been an international financial centre for over 40 years now. Very large international firms such as banks, law firms, have offices there and are able to secure the help and assistance that may be required by the owners of yachts.

You have the likes of banks such as City Bank and JP Morgan for the Americans and HSBC for the Brits for instance. Barclays are represented as well and they are quite important in Yacht finance. So

are the Law firms Allen and Overy, all sorts of law firms are there so I don't want to tell any more names really.

All these quality service providers are present and they help in setting up a secure environment for the yacht owners I would say.

Furthermore one thing that needs to be said about the Luxembourgish people is that they speak three languages at least. So even if you call the Luxembourg Maritime Administration or any administration in Luxembourg someone will be able to talk to you in a language you understand basically, they all speak French, German and English and that is the minimum.

What about the maritime industry in Luxembourg? The Luxembourg flag was created 20 years ago by a law, which was in 1990. Since this creation it has confirmed its will to pursue development in the sector and the Maritime Authority is absolutely determined to pursue its efforts to offer the best possible service. Therefore they want quality. I will show you a bit later that this has really been achieved.

I am not going to go too far into statistics. There is something I think this year, or last year in 2009 there were about 210 ships on the registry. This is not very much compared to the UK flag I admit, however it has been growing since 2004 in a very steady manner and the Maritime Authority have always wanted to carry out a policy of niche where they choose only the type of vessels that they really want to be there. They won't have oil tankers which might be too dangerous, they are okay to have super yachts and they do like them and so there are about, or there were in 2008 92 merchant vessels and 75 commercial yachts on the registry.

This is not much but it is very well managed. Now the interest of the Luxembourg flag is that they want a modern and flexible regime where you are able to have either a full registration system or a bare boat registration, in and out bare boat. In any case registering in Luxembourg you need to go through an accredited ship manager. Navilux and three other companies in Luxembourg are accredited ship managers and can offer these services. There are also a number of more independent individuals who can offer this service. They are all on the list and the website of the Maritime Authority.

Luxembourg has committed to quality and is a recognised flag. It has ISO certification, it has adhered to the IMO voluntary audit scheme, it has received a number of quality management awards, it is now also on the white list of ports state control and STCW and it is also on the MOU memorandum understanding of the Paris convention white list.

What are the actual benefits of the Luxembourg flag? Well the register is open to any EU maritime company. However I would say that unlike the Red Ensign it is close to off shore companies IBVIs and Cayman Islands etc. etc. That is maybe quite a difference in fact. You don't need to set up a Luxembourg company; you can have an EU company and adhere to the register.

Luxembourg has signed the international maritime conventions, organisation conventions and is presently reviewing its law in order to adapt to the net international labour organisation requirements that are going to come in force at the end of 2011.

The register itself is open to vessels in class or when the vessels are under 24 metres in overall length they need to have if not in class and EC type examination certificate. The vessels must be less than 15

years old, there are possible exemptions for that and they are to be equal or above 25 gross tonnes.

For your information there are two sets of technical rules, one that is for vessels below 24 metres in low line length and another one for vessels from and above 25 metres in low line length. One point, which I should mention, is that the register is open to commercial vessels. There is no 'just pleasure register' for the time being.

The specificities of the Luxembourg flag lie in the technical rules that were not so much in the technical rules themselves but in the application of these technical rules.

The technical rules were first actually set up with the help of Bureau VERITAS in the 1990s and they offer quite an interesting alternative to the MCA in our view. We at Navilux have an experience because we are quite curious of different flags and we actually don't only register vessels under the Luxembourg flag we have quite a few vessels under the UK flag or some under the Maltese flag. So we usually exercise our critical view on these things.

What makes the specificity of the flag is that the Maritime Authority doesn't have only its own inspectors, there aren't many accredited Luxembourg flag inspectors, and they use the classification societies to actually carry out the inspections on board the vessels. Funnily enough, although there is absolutely no compromise with safety the great interest of that is that the class societies look at the vessels and see that if they don't comply completely with the rules there may be ways of actually making sure that safety is still there but an alternative can be found and some solutions can be found to adapt the vessel to

the necessities of security and finding a few exemptions in some cases.

So there is a lot of flexibility and whereas we understand that MCA inspectors are quite often very adamant to follow the rules and there is little flexibility. Luxembourg does have this possibility of sometimes negotiating between the manager, class society and the Maritime Authority and the Maritime Authority sometimes accepts our point.

Our experience shows that this Maritime Authority as a conclusion is very open minded and very pragmatic. However there is no spinelessness because as you probably know for some of you the flag inspector comes once a year and ticks a few boxes. There is what is called a flag survey inspection report and we note that those flag inspection survey reports must absolutely be enforced.

I think another interesting point about the Luxembourg flag is the social package for the crew. This is very well known I think by captains and crew here in France because actually there quite often are prescribers for the Luxembourg flag because of the interest of the crew and social package. The social package applies only to crew who are resident in the EU and I say resident, it isn't a nationality criterion, it is residency that counts.

The Luxembourg social security actually takes over illness, pension and unemployment and the interest is that the cost of all these services, which are of very good quality, is actually lower than in many European countries. So employers pays 13% or 14% contributions for the Master and approximately 16% for crew members whereas the employee contributions are about 12% for the Master and 14% for other crew members.

Furthermore tax wise for the crew there is also an interest i.e. that the crew benefit from the same income tax rate as cross border workers and that is 10% which is very good.

So this is my presentation and as a conclusion I just wanted to say that Luxembourg may appear at first site as a small country but it has the ability to take care of the yachting industry and is determined to enforce quality standards. So my message would be do not neglect the option and do not hesitate to contact us to answer any questions if you want to go in more detail.

Tork Buckley: Thank you very much.

Audience: I just have one question to both of you, does the captain have to be an EU resident, is that a requirement?

Dominique Jones: In Luxembourg the Captain has to be an EU resident.

Anne Fenech: No, in Malta there are absolutely no restrictions on nationality.

Tork Buckley: Also to say that when the presentations are finished we are going to have a wide Q&A. I would like to move next to a flag that we don't perhaps know terribly well which is the Madeira flag, represented here by Mr. Lauren Billet which is now going to tell us something about the Madeira flag. I think we know it better as something you drink?

Lauren Billet:

As well. Well good morning and thank you for giving me this chance to present Madeira to you. I do represent the flag in this instance and I would like to explain a little bit about Madeira, first of all where is it? I am sure as Captains you know it is this volcanic, dormant we hope, rock out off the coast of Africa. But it is more than that. Madeira is a part of Portugal and therefore it is wholly within the European Union.

It has certain fiscal advantages, which were given to Madeira as an outermost region of the European Union. These fiscal advantages are given in the form of actually structural aid.

Madeira's international shipping register, the MAR was created within the framework of an attractive international business centre that provides Madeira with an important role in the shipping world. Knowing that operational costs are a critical factor in the shipping business MAR has become a credible and competitive alternative compared to other international registers maintaining the quality levels and the safety culture of an EU register.

The international shipping register is Portugal's second register. Besides commercial vessels and oilrig platforms MAR will accept two types of yacht registration both private and commercial and all vessels fly the Portuguesa flag.

The specific advantages in the registration of yachts both commercial and pleasure is an EU register with full access and without any restriction to navigate within European Union waters. There is an exemption or a low VAT rate. Sea going commercial yachts will be exempt from VAT on registration and on charter contracts and on the purchase of supply of goods to be consumed on board the yacht including fuel and repairs. A Madeira company is given a VAT

number automatically upon incorporation and that forms a part of the company's fiscal number.

Private yachts are subject to the lowest VAT rate in the EU at 14% on the import or purchase of the yacht through a Madeira company and registration within the MAR.

There are no citizenship requirements for the crew on board the commercial yachts registered with the MAR. There is a very flexible social security regime for the crew on-board all commercial yachts meaning they do not have to contribute to the Portuguese system provided they have an alternative scheme or a private insurance, both are acceptable.

The wages of the crew are exempt from all income taxes. There is no obligation to form a local company, the MAR will accept companies both within and without the EU, there is no restriction whatsoever. But if you do have a Madeira company of course this will allow access to the preferential tax regime.

Yacht owning and shipping companies licensed in Madeira benefit from a corporate tax rate of 5% and from no withholding taxes on the distribution of dividends to shareholders. This is particularly attractive for yachts which are owned by non EU citizens or residents of Monaco for example since these distributions can be made to any person in any country. In the event that the charter is actually profitable it is good to know that the owner can retain 95% of those profits.

All international maritime conventions ratified by Portugal are fully applicable and respected the by MAR. There is a flexible mortgage system allowing both parties to choose the jurisdiction which will

regulate the terms of the mortgage and this is very attractive to financiers, to banks who are financing vessels since they are often happier with their own jurisdiction maybe than another one. The MAR will accept surveys and documentation by the major classification societies including Lloyds, VERITAS, the Renar, the Renav etc.

The MAR has never been considered a flag of convenience by the international transport federation and it is also included in the white list of the Paris memorandum of understanding as compiled by port state authorities.

Unlike the British registries in Portugal or Madeira there is not a specific code for the registration of large yachts. What this means in practice is that MAR like many other non British registries will follow the MCA code as a reference rather than an obligatory set of rules. Therefore there is room for some exceptions and flexibility by MAR in certain questions as long as safety on-board is guaranteed and this is critical.

The formalities are not particularly onerous or complicated. As I said you don't need to use a Madeira company. If you do they can be set up within five working days. If you do use a Madeira company the fees are reduced by 20% and there is no fee on registration.

The technical commission will demand various documents and information on the vessel will have to be submitted and this depends on whether the registration is temporary or permanent. And in the case of a yacht registration on whether the yacht is to be used for pleasure or commercial activities.

Temporary registration is allowed by law as well as bare boat charters. This may be carried out also by Portuguese consulates

where the consul can actually register the vessel, issuing the respective certificate providing all the necessary documents from the ship owner have been approved by MARs technical commission.

That is my edited version because I know we are under pressure for time so thank you very much and I look forward to your questions after.

Tork Buckley: Thank you very much. We are next going to turn to the Cayman Islands, who probably register more yachts than maybe any other flag and the person that is going to come and steel the microphone off me is Edward Henny.

Edward Henny: Thank you very much for being here. Contrary to many of my colleagues over here I am not a lawyer I am a marine engineer, I come from a fisherman's village and I cannot talk to you about all details of VAT, law, company establishment. But I can talk you through how we stand towards the owner and the specific demands on-board.

I heard a few comments here that we as red ensign flag have a reputation for being very strict. In our code is a sentence that we always will assess equivalent levels. We may not do that by class societies but the equivalent will always be valued when it is produced by ship owners, shipyards or captains in your case. For all those legal issues where certificates are needed, where there are procedures to follow, I brought I think 75 of those memory sticks with me which I can hand out afterwards, if you want to have a look at that

yourself on your own laptop in your own time. I think that is a wiser idea than when I start talking to you to procedures, which becomes very boring in fact.

But for everybody here is that memory stick which I will provide later.

We are a white-listed flag as all the others here are luckily. We register not only yachts (although we are very specialised in that as you can see when you walk around the port). But we also do a lot of tankers and unlike comments made here. "tankers are unsafe", tankers are *not* unsafe but properly sailed and properly surveyed they are one of the safest types of ships in the industry. Hence we have a hands-on approach. The people who know about ships have all the shipping background and when we are on-board we have people with experience on-board the vessels.

We have also established the thinking that it is a good idea to have local representatives. I am here as a representative of Monaco so I can do the surveys from say Genoa to Marseilles. We have representatives in Greece, in Hong Kong, Cayman Islands of course and Miami, and we can have global coverage. Again the argument of picking up the phone is you can always have somebody from our registry on the phone.

You can also plan your survey on a very quick timescale and flexibility is normally very appreciated by people who are in your business. Be recognised that it should be expanded from May on as we will have a local surveyor based in Genoa as well who will deal with ship new construction in Italy and also the ports round Italy. So that is expanding and we feel that that level of service will increase coming to our flag.

That is about all I would like to say and I would like to listen to your questions later on as well because I think that is normally the most valuable thing in these kinds of operations. Thank you very much for your attention.

Tork Buckley: Thanks Edward. We now move to the local flag, the Monagas flag which is going to be explained to you by Armando Capura from the St. Vincent registry.

Armando Capura: Ladies and gentlemen good morning. My colleagues and competitors spoke in English very well. My English is very poor and for this reason I ask you for your pardon.

It is not my intention now to go into detail about the registration of the yacht commercial and/or pleasure yacht with the St. Vincent flag. From this administrative point of view I can tell you that considering the larger number of yacht registered the procedures are quite simple and the fees are more than acceptable. All this information is public and you can find them in our website.

What I would like to tell you now is something very practical. I am not a lawyer, I am not a captain, I have a degree in Politics and I spent 25 years with classification society Ajax member, so I consider myself a technician and as a technician I will speak with you now.

Let me focus on three things. Reputation – it's true, St. Vincent and the Grenadine is a flag of convenience. For sure the Maritime Administration behind this flag is not a non-profit body. This is clear. In the meantime when we speak, when we mention reputation of a

flag, to what we make reference? Normally we make reference to their results in terms of detention of ship published in the various website belonging to Paris MOU, Tokyo MOU, Mediterranean MOU, Black Sea, US Coastguard and so on.

If you wish and you have time to give a look to these websites you will find that the St. Vincent and the Grenadine is in the black list inside the Paris MOU website. Blacklist which is split in four, high risk, low risk, medium to high and very high risk. Our position is improving but it is not yet as I wish.

If you give a look to the other website belonging to the other MOU this blacklist does not exist. And last but not least if you wish you may say that inside the Paris MOU website many vessels inspected by port state controls inside the Paris MOU which is the most severe completed the inspection with zero deficiencies.

So the reputation on the paper is what you find on the press, on the specialised press, on the various website. As far as yachts are concerning availability. We are two technicians no more, available 24 hours on 24 according to your needs. You give a ring; you send an email, in the worst case no more than 24 hours are necessary to give answers.

Interpretation of the rules. What rules apply to the yacht? We have two safety codes, one intended for pleasure yachts and one intended for commercial yachts. In my opinion as a technician I consider these two codes very easy, very applicable. There is a possibility to grant exemption, there is a possibility to consider equivalent arrangements.

Let me finish saying that we are owner minded. I'm at your disposal for any questions. Thanks for your attention.

Tork Buckley: Thank you very much. Our next presenter is Paul Archer who has to actually wear three hats because he's representing the UK flag, the Marshall Islands and the BVI flag.

Paul Archer: Thank you Tork. In fact I am not here representing any flags as such but let me just first start by saying thank you very much to the Yacht Club and the sponsors for providing this forum. It is occasions like this that give us the opportunity to meet and talk casually and quickly and to make new contacts and that is very important in our industry where the professionalism and the need for knowledge is growing every day.

I think the first thing to remember this morning from this morning's first talk was that the magic word bespoke. We work for Monaco, we have a team that do yacht registrations; we probably register over 100 yachts every year in all of the jurisdictions that are represented here today. But the bespoke element is probably the most important element and I suppose in washing up here which is what I am going to do now is that when you are looking for a flag you have got to consider all of the aspects of what you are trying to achieve.

It is not just simply this flag is that cost or this flag is that and whatever. Look back and look at the problem and look at the situation and what you are trying to achieve.

In what you are trying to achieve there are many elements. Where is your client based, what nationality, what is his tax position? What is the history of the vessel, has that history included a VAT situation where it has been paid or reclaimed or never paid or exonerated or whatever? What is the position of class on that vessel? We have

heard today that there are different standards that are approached or applied by different flags and so when you are looking at flagging a vessel try and see where you are and where your client wants to be in the most cost effective way.

There are certain things to be gained or lost on registration. To me a registration is equally as important as insurance because once you register your boat you are gaining title to your asset and that is a very important thing. Have you secured your title, is that title protected by the flag and are you maintaining the residual value on your asset for your client?

All of these things come together and there is no single answer to flag but there are answers to questions. Once you put those questions on the table you can be directed into which flag is going to give you the best solution for your client and that is what we are here to do today.

Whether it be Cayman Islands who we share the office with in Monaco or with Malta or with Madeira or St. Vincent's, we work with all of them and very happily. But each of those clients that we direct there are going there for a reason and that reason is a balance of the facts that we are looking at to see what is going to be the best solution for them.

So when you are talking about flag, consider the options. It is not a question of looking at the problem it is a question of looking down at it to see how the issues radiate out.

Now we also have found that the issue of VAT is a very important situation and more often than not we have seen situations where clients have come to us and we have found because of poor advice

the VAT, the choice of flag has resulted in the loss of their VAT paid status. All of these things must be considered so look at the whole problem and come up with the answer. That is all that I would really like to say to you today. I think we are here for questions and I think just think before you jump.

Tork Buckley: Thank you very much Paul. Our final flag that we are going to look at is the French flag, the Reef which is a specific and relatively new flag different to what once would conceive as a French flag. But to explain all that I am going to pass you over to Emily Chardan from The Reef.

Emily Chardan: I am the manager of the French international register and it is true that it is a young registry since it does exist from 2006. It is not dedicated only to commission yachts but it also registers commercial ships such as tankers, bunkers or big container ships. I must admit that for yachts it is only dedicated to commercial yachts, length of hull more than 24 metres up to now and we started from nothing.

I must say that in nearly four years we got many, 15 units so I don't know if we will continue to grow but since we got only four years of existence it is a good thing. Concerning the commercial yacht she must be more than 24 metres length of her hull and run throughout the international capotage or deep sea and manned by at least 25% crews from the European Union or EEE.

Concerning all safety standards required French administration has set up special division yacht code that we called in our language

Division 242, and we get some inspectors going through yachts doing some eligibility visit. We inspect the yacht and then answer and can say to the captain or the representative what it will cost and if it costs something.

Then what you should know is that every technical survey is for one yacht, each yacht is passed through a commission, a national commission that does approve/disapprove the yacht and authorise the yacht to fly the French International Registry. This gives some kind of flexibility in case of technical things that could not appear at first.

To register it is quite an easy procedure since we are based in Marseille for all staff, and dealing with e-matriculation registration for the yacht there is a small staff and we can go throughout to register very quickly. To register Reef gives value reduction and exemption for instance from the annual sailing duty and for the crew resident in France there is a full income tax exemption. Concerning the social protection we do not impose the French or have security unless the crew is a resident, not nationality but tax resident in France.

What I can say also for the crew that are established out of France their foreign social security is available and this according with the EU regulations.

That is what I could say and if you have got anything else, ask questions.

Tork Buckley: Thank you very much Emily. So Q&A, anybody out there have any burning questions, one right here.

Gino Battaglia: Well thank you for your explanation and I want to say I am with the Cayman Island ship and I can say it is very simple when you learn what they want. But the problem is sometimes when you are approaching, coming to the board and starting on the boat, it is easy because they know the boat. But sometimes this does not happen now because maybe the gentleman will be the same for the future, but different surveyors come with different ideas and you have to change something and this would be cost for the owner.

In this moment what I saw and this competition between flag maybe can make the life easy for the crew on-board. But I want to find the right way to explain to you the situation. Also some of you that say we are not forget these ones are yachting, a pleasure yacht, that is why what I saw in 30 years now the difference we start to get boring to the owner because all are different, this regulation, these people that change mind.

Last week I went in Miami to do a visit for one charter guy who wants to buy a yacht and there was a 50 million yacht. When you start approaching all these flag companies and maybe because they want to change something, some of the flag they don't want to accept the captain, and the guy say "Listen I want to keep it as moored yacht and then buy one villa in St. Bart and one Villa in Sardinia."

That means we have less people buying yachts and we are lucky here in Monaco, we have a nice box I keep in. We can never at the least 20 CV every day, people looking for jobs. I think this is also part of your responsibility because I am working well and I am well known I am Gino Battaglia, two-time our captain for charter. I did more than

2,000 charter days. That is to say when the people come on-board you can't say no because this is a pleasure yacht, the yacht cost a million, that is why you have to understand for other point of view our situation.

We went to a shipyard in Marseilles, there is one captain and four; some Lloyds request the estimate was 150,000, the end of the bill arrived close to 400,000. And we send before to go to shipyard we send docking plan, we send specific issues and everything and in my career I meet a lot of surveyors.

That is why I say you can say something and when we are approaching the shipyard you can change there or maybe you send another guy. The guy don't see this make for us a difficult life because we can be blind and we have to face this situation.

That is what I want to say, you are in charge of this. Be flexible especially because these are pleasure yacht, don't forget this word, this is a pleasure yacht. Thank you very much.

Tork Buckley: Edward you're a flag and a surveyor so this one goes to you.

Edward Henny: Now Captain I appreciate your concerns about having different surveyors and different opinions. In our office we try to be as consistent as possible by having regular meetings. That is one of the reasons why we have local presence. So over the next few years you will have me on-board, perhaps you don't like it but at least you know where you are up to.

At least you have consistency in persons on-board.

The other thing you mentioned was Lloyds doing shipyard repairs, I cannot comment on that because I was not there but it is a fact that a lot of regulations have been put into place. When I joined Lloyds eight years ago worked seven years for Lloyds, nearly every year new certification was handed out. Not by the class societies, not by the flag, but it was also politically induced. So like ISBS, it is a bit of an informal comment but ISBS is a very big nuisance every now and then, especially in your kind of field. We know that, we appreciate that but thanks to our American friends who forced that into the regulations we are stuck with it.

The thing is about assessing equivalent arrangements I would like to say that in our office all the surveyors are highly experienced in yachts so we can always look at an equivalent situation. That is not meaning when your life raft is not serviced when it was due, there is no equivalent for that, then we draw the line. That is the end of it.

But if you instead of having a fire door you want to have another type of bulkhead during new builds we have even wooden fire bulkheads, which are an equivalent arrangement. So there are many things possible as long as it is scientifically established that the arrangement is at least similar as the prescriptive regulation. So in that way we appreciate the special demands of the yachting industry. But I look forward to the next survey and what you ship there. Thank you very much for your comment.

Gino Battaglia: As you say when like the law in 2004 we bought the yacht in part from private to commercial with Peter Southgate, we make a lot of arrangement. I have been in 98 with the first in yachting to comply

with MCA, and I say we must be flexible from what happen in Miami was with MCA.

With the Cayman Islands we are lucky because all the time you are talking with a person they won't understand and they say the secret is to find a solution. You want to find the solution, not because you are here because I am very clear, I am not, the people know me and I will say what I think all the time. As I say be flexible because the rich goal is to find the solution and make the donor happy, make the boat sailing.

Male: There are two points here, which actually are quite tied together. One is consistency and interpretation and the other is the abhorrence of regulation in owners because let's face it as Tina said they don't like being regulated, but they have to be.

Those two come together quite clearly because in fact the lack of consistency is in a large part because they don't talk to each other and regulation comes into play and I am thinking obviously MLC 2006 here, but regulation comes into play because the industry, whether it be flag, whether it be class, don't actually act together enough. Albeit that they are financially competitors they can still act together politically and I think MLC 2006 is the wakeup call to the industry that next time you had better be acting together and I would be fascinated in your comments on that.

Male: Also the Captain Battaglia mentioned sailing private or sailing commercial. Be aware that when you sail private the amount of

regulation is not even a tenth of what you have when you are commercial. So that is something to keep in mind. When owners really want to sail private that saves them a hell of a lot of regulations amongst ISM ISBS all the things you suffer most from.

MLC 2006 the final stamp on that if it is applied to private vessels is not yet clear so we will have to see that. But the flags, at least the Red Ensign flags are sitting together in looking to substantial equivalents, so not one to one implement what is there. We also see taking accounts the industry by having a committee which industry members sitting in our place and commenting on our regulations and MLC 2006 that will be a major issue but it is not decided yet and we will for sure make a strong point in finding equivalent levels which are acceptable to the IMO. So in that respect we work together.

Anne Fenech:

May I add something, I think the comment you made about the fact that the owners don't like to be forced to follow rules and to be reminded that there are rules because they want to have pleasure on their vessel and just enjoy them is perfectly true. I think and I concur with Paul Archer about this, what is very important is for us managers to actually give them a tailor made solution from the start where we understand their needs and what they are exactly going to do with their yacht and what they want to do with their yacht, what their project is. Because that is how we can answer their requirements and that is also how we can adapt to and find the best solutions for them.

Then we have to work together, we have to work as management companies together with the captains to try and ease the burden of

the legislation. That is not always easy I must say because our job is being made more and more difficult by all the legislation that is coming out and all the changes in the law be it on the technical side or also on the fiscal side at the moment with the VAT and so on and so forth.

So managers in that respect have a role to play and they must be very flexible and understanding and also be able to have very good contacts with the maritime authorities, the captains and the owners.

Male: Yes but I think it is also very important to remember that you are all part of the process, it can't just be class, it can't just be flag. But everyone within the industry has to be part of that political process to influence legislators.

I would like to ask for the Monaco viewpoint on this from...

Tork Buckley: I believe we have got a question right at the back. And as always the microphone is right at the front.

Male: We are here talking about registration and we are hearing the terms private, pleasure banded together and commercial registration. We have got MLC looming on the horizon about 12, 15 months away. If we make the assumption which we have been living with up until now, that MLC is going to apply to vessels that are commercially registered, then we consider that there is a very strong indication that the ILO is going to take a position that any vessel which is registered not to an individual but to any sort of corporate entity will be

interpreted as being engaged in commercial activity, because there is a commercial imperative behind forming a corporation in the first place, even if it is only for tax advantage. Then how do the advisors on registration for yachts plan to give owners advice on this issue?

Male:

Resounding silence. I can comment on this actually because there was a meeting at the Antibes Yacht Show just recently where the representative of ILO presented and what she said, paraphrased effectively, was that they are not in the business of defining what is a private yacht and what is a commercial yacht. That for example the UK merchant shipping act I think has long defined the difference between commercial and private and therefore they would “See no reason why they would argue with the UKs perspective on what is commercial and what is private.”

However, despite that being said publicly I understand also Rod’s viewpoint because the definition may not be simply one of activity it may enter into the area of VAT, fiscal and management matters. So it is actually quite an interesting thought especially for the managers to contemplate as to whether that would be viewed as commercial activity because there is somewhere benefit coming from it, if not directly. Yes Paul, go ahead.

Paul Archer:

I think there is a point here that has come to our attention over the last few years and that is that the UK for example and the UK MCA have taken the view that a vessel held in a company does not have to meet the MCA requirements even though it is held in that company. They have accepted the fact and it is a fact of commercial life today,

that the ownership of a vessel in a special purpose vehicle is the norm. I would think that the ILO would be very well advised to consider and to take this approach when reviewing our position and our client's position as yacht owners to take exactly the same view.

Tork Buckley: Anne I think you have got a comment on this.

Anne Fenech: My comment is a very generic comment. As I said initially I don't represent the flag I am the service provider, we offer the service and assist clients find the most appropriate jurisdiction to suit their requirements.

However, when it comes to this particular convention I know for a fact that the administration Malta is very seriously looking at it and looking at the implications and seeing how it will interpret it. However, if we were to advise the administration, we would probably be consulted. Because the advantage with Malta is that there is a great degree of collaboration between the administration, the flag authorities and the practitioners to the extent that on a very regular basis when we come across difficulties which we believe that the registry and the authorities should deal with or perhaps look at more closely, we have the flexibility of actually picking up the telephone and having a discussion which helps enormously.

In this respect I think we would certainly be going down the route which Paul has advised here and we would certainly be taking the line that in today's day and age it is very normal for private individuals to use corporate vehicles purely as a means to regulate their own

financial situation. Consequently the mere fact that the ownership of the yacht is in the name of a corporate vehicle rather than the name of an individual should not automatically mean that these people are commercial. We would certainly be pushing for that interpretation. Because otherwise it just wouldn't make any sense at all.

Male: Only within observation. I have the feeling that the interests here represented are contradictory. The gentleman requested more flexibility; you are mentioning ILO convention and MLC 2006, which in the very close future will be in force.

In my opinion to speak about implementation of either convention, for example 147, speaking about the recommendation they mention surface number of toilets according to the number of person on-board, will complicate the matter for sure.

So in my opinion, you represent the business you must have the same approach. If you want to complicate matters it is very easy to make that, very, very easy. More difficult is it to use the brain. Thanks.

Male: Unfortunately the problem is that ILO wants us to implement it and they do not seem to be willing to give much in the way of consideration before the implementation of the convention. Afterwards they may be able to but that is a little late.

So this again is why I speak of us all acting together politically because to all the representatives of Flag here you need to be helping

us, the industry to get the reality of what it may do to us across to those who are going to implement the convention.

Male: One of the reasons for that is that we have a board where all the major management companies are in and from people who fly more than two ships, we get that feedback in that committee. So we are listening and we are having our vote inside the Red Ensign discussion. So we are actively busy with that.

But okay that is not out in the open for the press. We cannot fight that fight in the open but be aware that we also appreciate the industry and when the alternative is no yacht at all nobody will be happy of course. So is not that it's not out there, we do not fight it out in the open but be aware there has been work on that.

Tork Buckley: Question middle of the room.

Male: All these comments revolve around bureaucracy. Bureaucrats & mid-level bureaucrats that impose regulations from a desk.

Safety is fine, it is absolutely fine but everybody is forgetting that there are people that are related to this morning's chat that want to escape the mediocrity of daily life. That is why they work and that is why they put money into boats and God forbid that one day they discover that because of all these regulations, having a boat does not add one bit to their quality of life. And then where will we all be?

All this is superfluous; this discussion is useless because we have people that just will not want to go there with all this. Everybody forgets that our industry survives on wealthy people wanting to enjoy themselves. If you keep on cranking on all this, what are they going to do it for?

Edward Henny: Actually one interesting point there Pablo is that obviously some of the regulations are inevitable, unavoidable as in aviation. But somehow it is also the job of the industry to make the inevitable regulation as invisible as possible. Because you can't avoid some of it so therefore our job, all of us, is just to make it seem as though it is free and easy even if it really isn't.

Male: I would like to comment on that as well.

Male: Sorry Edward but I think you have got a very good point there and I think that the real problem with any industry whether it be the legal profession, the banking profession, dare I say it in the UK maybe even the politicians are going to come in for some legislation. It is a fact of life and we have got to appreciate that.

Now that we have got to do is we have got to actually pick up the ball and run with it rather than try and dribble it along the ground. At the moment we are being carried along by the tide and not actually taking as an industry the right steps.

I am not sure that we have those groups together that are linked that will provide that leadership that we can go to the ILO. The ILO has

really got a situation where the industry that we are in and the participation that you have in the industry and that we have from our side, we are very stymied in the way we can approach them and the timescale it takes to get an answer out of them. They are talking about 13 years or something, up to 20 years to get...

Male: For an amendment to the convention between ten and 15 years. For a facilitated amendment it could be a little bit quicker.

Male: So it is this facilitated amendments that we are going to have to go and try and get...

Male: That is still two and a bit years.

Male: That's a long way away but we have got to take our own control of this business and at the end of the day it is the old thing, if you don't control your business someone else will do it for you. That is where we have made a big mistake.

Tork Buckley: Good point. Edward you had a point to make and then Rod at the back.

Edward Henny: This is exactly what I was aiming at as well. I am Dutch and did a lot of new construction surveys on that shipyard. That shipyard has a

reputation of being very, very stubborn and the first reaction is why is this regulation, we don't want to comply with it.

On the other hand the second reaction is what can we do in our way to make it equivalent and that is the route to follow. By doing that on a scale beyond belief and some people are still saying we don't want regulation and they stopped there and the other ones are taking up the ball and fight against it but also provides solution from the industry and that is highly appreciated by our organisations. I think as Paul said that is the way forward.

Male: I agree, Rod.

Rod: Just coming back to the point I made a little while ago. Don't shoot the messenger, the message I gave you was a point that was made in Geneva in the ILO headquarters when we were speaking with some of their experts. One of their experts actually pointed out the window to the yachts in the nearby marina and said "You know as far as our committee of experts is concerned that is a private yacht because it is registered to an individual. Normally we would regard any commercial entity owning a yacht as giving that yacht a commercial ownership."

Moving on a bit from that the ILO realises that yachting is going to be in severe difficulties over implementation of certain parts of the convention. They have given an opportunity for their committee of experts to be given some sort of objective, quantitative, scientific data

with which to measure the impact of the ILO crew space conventions on yachts and then on the yachting industry.

So as of yesterday, a list of parameters was circulated to designers, builders, naval architects, members of MEBA and many other people in the industry, to take the designs of a present yacht and apply to it the requirements of MLC. Then to quantitate the results. So that ILO can then see "Okay this is going to have an impact, it is going to reduce owner space by whatever the answer is, 40%, 50%, 60%" then they will be prepared to listen to the opinion of the industry but that is going to have a major impact on the production of yachts and therefore on jobs.

I wrote the parameters myself and anybody in this room is now welcome to go to the PYA website and download it and carry out the exercise on their own yachts if they would like to because it creates more evidence.

There is one more issue that we learned from the ILO at the Antibes Yacht Show was that it has never been used but there is a mechanism for a formal protest from any parties who feel that they were not properly consulted in the drawing up of the legislation. These letters of protest can now be written by any of our organisation such as MEBA. They can also be written by individuals and the more letters that we bombard them with the better.

Male: That is absolutely true. They said that we are perfectly entitled; they publicly said that government, unions or ship owners didn't consult us. As such we have the vested interest to say we weren't consulted and formally saying that strengthens our case with ILO. So for every

flag, every captain, everybody, send them that letter because it can only help us all.

Incidentally it is not only our industry, tugs and work boats were forgotten about as well, they cannot comply either. So those of us who were left out are actually quite a large lump if we get together.

Male:

Good morning to everyone. I just want to say something because I am very young and I think I am the symbol of the yacht class that is growing up. Sometimes for the flag authorities it looks like they want to implement a system but the problem in the middle of the system there are just the captains. In one side the flag authorities, in the middle there is the captain and in the other side there is the owner.

Sometimes what the flag authorities want to implement it is like it is useless because it is not what the owner wants. It looks like what Tine said before because these people are coming on the boat for a five star service and sometimes we are not able to give them it because the rest hours, we have the regulation for the jet ski, to drive the jet ski they need the driving licence. If for example on a 50 meter boat we have the boat running with eight people crew as the minimum safe manning document requires, it is not really possible to give a five star service to them.

So I think this also is another problem because when the people come for charter then don't know the regulations, they just want it because they are spending their money and they want a five star service and I think they don't really care about the regulations. I know that it is really important also the safety and whatsoever but I think this is also another point because the future is the charter and it is a

new boat and it looks like the regulations are pushing the people to buy private yachts because on the private they can do whatever they like, but not on the charter.

Male: May I comment on the minimum safe manning document? The minimum safe manning document specifies your minimum crew to sail around. There is a sentence in that that you have to have sufficient crew for the operations you intend. So if you want to deliver five star service above your normal sailing around that is the decision from you and your officers to have additional crew on board.

Male: The owner doesn't want to pay for it. So when he steps into an airline he does not want to pay for the annual inspection of his gas turbine?

If you extrapolate this then you end up in sometimes difficult situations. Rest hours, nobody cares about rest hours, they all tell me. But when the vessel is grounded, the first thing everybody shouts out is why were the rest hours not checked? So it is always afterwards, they say don't blame the messenger only but it is always when the tanker sinks that everyone says where were the regulations. When we enforce regulations in a polite way we take into account the request, the special request of this industry, there should be nothing wrong with that. And when you have any objections we have formal ways of giving that but I honestly do think there should be something in place.

Male: One of the problems we have in the industry is that I understand your problem and I understand your problem, but what you have is a total process from client to ownership or charter. From that process of thinking “I would like to own a yacht” to actually owning one there is a number of interested parties all making money out of him on the way.

Some of those parties I have to say are not really conspiring with the captains and the class society to help the owner understand what he can and can't do. Or in the case of a charter when the charterer arrives on the boat “No I am sorry sir you can't be in tomorrow because we don't go that fast.” This is a classic error and it is one where it causes the dissatisfaction.

If a charter guest knows that they can't drive a jet ski without a licence before they put their money down, they are not going to bitch about it. But the poor captain has to deal with it when they step on-board because they weren't told.

So all of the industry has to cleverly conspire together to really be honest and transparent about it and then we are not going to have the same problems.

Male: These kinds of things we are happy to provide you with all the legal support you need, seriously.

Anne Fenech: May I just say something at this point. I think it is crucial for all of us to understand that yachting is part of a bigger picture and on an international level it is part of the bigger shipping picture. And shipping has been around for hundreds of years and over those

hundreds of years we have seen more and more regulation coming out of the international Maritime organisations, the United Nations and of course now Europe.

So I think we need to understand that when these regulations came about they came about as a result of a number of casualties. We saw the issues relating to the Torre Canyon to the Exxon Valdece, which increased the amount of regulation that we have at an international and at EU level.

Now of course all of you there are saying "Yes but what do we have to do with tankers carrying thousands of barrels of oil etc.?"

The point is though that when these regulations are made a number of them in my view of course are totally unnecessary. A number of them and I have to say we are seeing this increasingly from Europe now, these are knee jerk reactions I think to the situations as they arise because the politicians feel that they need to give the citizens who are not owners of ships, who are not owners of yachts a sense of security and that their interest is being taken care of.

Now in my experience because I am actually a Marine Litigation lawyer, in my experience what is going to make a difference is if people representing the yachting community, which in the whole scheme of things is a relatively new industry in terms of the size of yachts we are seeing today. You need to make your voice heard at a European level through the various people who represent your countries at EU level.

Because when push comes to shove all these decisions are taken on a vote basis and I have to say nine times out of ten the countries at EU level who speak out in favour of the owners and who try to put

some sense of level headedness in the whole scheme of things is Malta and Greece.

So really my appeal to you members of this industry is to put pressure behind people, either individually or as a group. There are so many yachting organisations now, yachting is big business worldwide and is growing. You need to put your politicians on the spot because at the end of the day it is the vote that counts.

Male: It is also quite pertinent to point out that as this is a captain's meeting the captain's work for wealthy men and women who have influence. So in fact you are in a very unique position to bring that influence to your owners and for them to bring it to politicians.

Norma: Well again I think it is really important that what we learned from Cleopatra in Antibes was that there is a mechanism for that and that is for everybody here to write letters of protest. We are all talking about representation and we are talking about safety and we are talking about the size of crew accommodations but I think one of the things that everybody really needs to remember that has potential to cause a great deal of problems and something that almost all of the flag state people mentioned in one capacity or another was the situation regarding social welfare and the accountability of owners whether they are corporations or individuals to be responsible for that.

Of course we all know that there are not captains or mariners or crew people or yacht owners that are evading taxes. However it may well

be that there are an awful lot of yacht owners, be they individuals or corporations that may not want to be open to that type of scrutiny.

So while you are thinking about making sure that your voice is heard and writing your letters of protest and joining your organisations and making sure that your organisations are writing letters protesting the fact that they have not been represented, think about the total implications to not only our jobs but our entire industry and the owners that support it and make this industry possible.

So I agree to have our voices heard is really, really important. We all need to think about the long-term implications beyond crew accommodations that are obvious but some of the other ones I think are even more detrimental in the long term.

Male:

Just a few words. I've heard a lot of criticism and comments about excessive and very burdensome regulations, which is fair. But it is also fair to say that a number of owners who want to use their yacht privately have been encouraged by advisors, mainly tax advisors to register their yacht as commercial yacht.

Of course when a yacht is a commercial yacht it is subject to quite drastic regulations and I just wonder whether it is not the time to move back to the reality. Because if owners who do not charter out, they charter the yacht to their own companies, but the official owner is the only charter of his own boat. Perhaps they should reconsider their position.

The tax advantages I mentioned, that it was under attack in France the VAT etc., which is connected to the commercial statuses. So I

think that when we advise our clients we should be sure what they want to do. Do they want to use their boat privately; they want really to use it commercially to charter it out. If not they should seriously consider moving to the status of private yacht rather than commercial yacht.

Male: Somebody on the panel was talking about their social provision for crew and a method whereby it can be privately operated and I am sorry to say I can't remember which flag it was. But perhaps in view of Norma's comments that you might want to revisit that system of a private provision for social provision. And while you think about which of you that was Dominique would you..?

Dominique Jones: I don't remember having spoken about private cover but private cover is possible in any case for crews. But the problem is you don't find with private cover as easily for the time being a cover that protects the whole family of the crewmember, which some social security systems do. So we have demands sometimes which are to find a private cover, which covers the family because the wife doesn't work, and things like that.

Now this is very specific but these demands exist and I think we will have to think aloud with insurance companies also to be able to find or create new products which will answer the questions and give appropriate cover to everybody.

Male: Which will also satisfy NLC 2006?

Dominique Jones: Exactly because that is really what we need to put in place now.

Male: And much as every flag would like to be everything flagged to them it is also true that crew move from boat to boat so they need a transportable social provision.

Male: Just one final comment. I think that Jean Jacques was absolutely spot on and that is that there is no free lunch.

Europe is bust, they are going to be looking for every penny they can get and they are going to be making huge inroads on your guys as captains and the cost of actually keeping a boat commercial may well be more than running it privately. I think we have all got to look at that, we spend a lot of time with our clients saying "Guys don't be silly, you are going to be the sole user of this boat." That is just not going to run today, it is just not going to happen. Go private, if you have got a boat enjoy it and have a trouble free existence otherwise get rid of the toy.

Male: Don't' get rid of it for God's sake, what are you talking about. Peter.

Peter: Good morning. It seems to me that the crux of all our problems and it has been for many years is not that there are regulations but that the regulations that we are trying to apply were designed for commercial shipping. We are trying to fit yachting into these

regulations. Isn't it about time that we all got together and fit the regulations into yachting?

Male:

When the MCA large commercial yacht code was designed the industry was involved in that as well major reconstructions, major naval architects and it is an equivalent to the regulations in force for merchant vessels. Similar processes will happen with the MLC 2006 and as I said before we appreciate the input of the industry and I am totally correct that if you imply the regulations from a commercial bulk carrier to a yacht, it looks like nothing.

But when you go for equivalent items and come up with proposals, as is the second nature of the Dutch shipbuilders, I can tell from experience you end up with some very nice looking, very special arrangements. Which are on the first side totally in contrary with regulations but if you have a deeper look to it and see what equivalent arrangements are put into place it is a well thought solution.

So that is the route to go to tailor make it and in the LI2 code it is actually stated that you can assess equivalent standards for your reference it is section 3-2.1, that is the core of that code. Look at that and come up with your own solution and share it to the class society or to the flag and if that is a valid thing which you can test, which you can see nobody would say just no because it is not prescriptive. We actually do not want to do everything prescriptive, it doesn't work.

Female:

Hello, I have talked enough today so I will be very brief but just a very quick observation. I think what is interesting, what you are saying, sitting here in the room with so many captains what you were just saying Manuel, you are very, very close to the owners and I actually, I feel for you because you are in a very tight spot.

All of you captains here, you will be on-board with these owners and are in charge of the ship for a week, two weeks a month and saying no to these people I know personally is very, very difficult. The jet skis when their friends want to do it and one is a rock star and whatever and you have to say no, in my industry it is practically impossible - and in your industry too I assume.

I understand the safety issues a bit and I am learning from what you are all saying here today. But I think this comes down to the fact that we are still talking about not that many people certainly sailing super yachts. We are talking as I say and there are a thousand billionaires, there are several multi millionaires out there that are actually pumping a lot of money into this industry from the pleasure and leisure point of view.

Somehow you must as an industry find a way to manage expectations so that it is not so much the captains problem but that the charter companies, the big shipyards, sorry but the magazines also you have to manage expectations of these clients whether they are multi millionaires or billionaires.

It is not you in this room that have to stand there suddenly and give them the bad news because all they want from you is good news. You need to find a way to communicate this clearly. That is my observation.

Male: Hello I have a question for Gino. Gino seems to be shocked about certain things that happen in our industry which have been happening for many years. But I think it is also important that we realise that sometimes we are responsible for crew who are not properly insured, who are not working in a safe environment. The industry needs to wake up to that and it is painful because we are waking up too late.

Male: One lesson and I repeat I am involved in the St. Lucia since I was 14 years old now I am 49. Frankly I never sail, I never be employed with owner and I can't be in some other yacht where the crew is not well kept. The insurance is at the top end.

That is depending also the style of the captain, the reputation of the captain because in my boat we are 16 crew, Filipino, multi nationality, we are all the same. The captain is in charge to know if the crew are rested. That is why sometimes you can do some hour more to leave the crew rested because also if something is up and you are in charge, I know some of the owners they provide to the crew because you can hear a lot of slanting in this industry.

But also, what the gentleman said before, the regulations are fine because some of the regulation was good for us, but now if we can, I believe this regulation that become business for the company for the flag state. Because each difficulty costs money, all this kind of situations they make the owner upset and the crew including the captain pay the price because they guys on-board and you are in charge of them, the guy get angry and all crew quit in the wrong situation because nothings going well, because there is only

complaining. But that is becoming because the yacht costs a lot of money, it is a lot of things but first of all we have to run well your ship.

That is my opinion that is why I am still running this boat. They are asking professionalism from the crew, but what the lady said before for example, the charter will come on-board and they must know what they can do and what they can't do.

They don't care, the brokers; what they want is to sign the contract and get the money; they don't show the contract to the client. That is why the company is in problem, because if there are some clients that know nothing about the labour contract. If you say sailing for ten hours you can't because the contract said you can't sail more than six hours. This is a big problem because there is no information. The business now is on the top, the money you want to regulate all job and all lifestyle.

Tork Buckley: Well we are out of time but I don't want to end on a negative note, not that you were being that negative. But it is still a wonderful industry and one of the things that the catastrophes that come along do are to pull us together so that we can act together. So although MLC 2006 is a very scary thing it is also a window of opportunity for us all to work together to make it an even better industry with more transparency and more fun. Thank you.

Male: Thank you again for coming and we are very, very enjoyed to receive you any time in Monaco; you are very welcome always.

Thank you. The next meeting will be in September, just doing the Monaco ritual, and between then I hope you have a very good season for the captain and very good vacation for the expert, maybe for the lawyer of course.

You don't have a vacation in the summer?

It was a joke. Okay thank you again and sorry we are late but we had a nice discussion and I think it was very positive. Thank you again.

END AUDIO