



GETTING PREPARED FOR THE 2018 YACHTING SEASON

With the early season yacht shows over and thoughts turning to summer cruising, now is the time for those in yachting to consider both recent changes and possible challenges ahead.

VAT

The EU Commission's ever increasing scrutiny of the yachting industry's tax affairs manifested itself most recently in their announcement of infringement procedures against Cyprus, Greece and Malta. Malta, at least, has begun its fight back with a formal response to the Commission lodged earlier this month. No matter the outcome of these infringement procedures, the spotlight on the yachting industry is unlikely to go away and there has therefore never been a more important time to take seriously your yacht's VAT arrangements. Those yachts which are not VAT paid or otherwise either operating on a bona fide commercial basis or qualifying for the temporary admission relief from VAT are advised to consider how they might regularise their arrangements.



French social security

The question of French social security payments for crew based in France is never far from the lips of those involved in the French yachting industry. Whilst the lobbying by the French yachting industry is ongoing and many owners continue to adopt a wait and see attitude, the French Government has agreed that (i) seafarers registered for social security in countries offering equivalent protection to those provided by the French ENIM need not pay social security in France and (ii) a seafarer will only be considered resident in France if he or she is in France for 6 months or more in any 12 month period.

The REG yacht code

In November 2017, the Red Ensign Group (REG) (the group of flags consisting of the UK and its overseas territories and Crown dependencies, including the Cayman Islands and the Isle of Man), published a new Yacht Code. This new code replaces the previous Large Yacht Code (LY3) and the Passenger Yacht Code (PYC) by combining and updating both. The new code comes into force for existing yachts upon the date of their first annual survey after 1 January 2019.

The new code applies retrospectively, so all yachts must be compliant

with it before their 2019 annual survey. Fortunately, most of the changes in the code involve 'soft changes' such as updating certain procedures on board. However, there are nonetheless changes which will result in some owners having to make physical modifications to their yachts. It is recommended that any work needed to make a yacht compliant be completed during the 2018/19 winter refit period.

For more information on how the new code will affect existing vessels, see the Red Ensign Group's briefing¹. For large yachts carrying up to 12 passengers, see Part A² section 1.6(2); for passenger yachts carrying up to 36 passengers, see Part B³ section 1.7(1). The Annexes⁴ section at the back of the publication is common to both Part A and Part B.

Casualty round up for 2017

The new code aims to maintain and improve safety standards, comfort and uniformity across the yachting industry. This is all the more pertinent given the extent of reported losses and claims in 2017.

Based on figures gathered from public sources and from our own involvement in a number of yacht casualties and claims during 2017, we understand there to have been a significant yacht related incident in every week of 2017. In common with most years, the main causes of loss during 2017 were: fire (38%), sinking or mechanical failure (19%) and grounding (11%).

In terms of the most expensive claims, fire topped the list by some margin, accounting for nearly 20% of total claims paid out by insurers during 2017. Groundings, together with lightning damage, accounted for a further 20% of amounts paid out on yacht claims.

The figures above do not include claims arising from US hurricane season. Hurricanes Harvey, Irma and Maria, all of which wreaked havoc in the Caribbean and US, ranked among the top 5 costliest named storms in US history. Whilst it is too early to be certain, forecasters are predicting a slightly above-average storm season for 2018, with 14 named storms expected between June and November 2018.

1. <http://www.redensigngroup.org/reg-yacht-code.aspx>

2. http://www.redensigngroup.org/media/2349/reg-yc_january_2019_edition_-_part_a.pdf

3. http://www.redensigngroup.org/media/2343/reg-yc_january_2019_edition_-_part_b.pdf

4. http://www.redensigngroup.org/media/2346/reg-yc_january_2019_edition_-_common_annexes.pdf

Notwithstanding the devastation caused by named storms in 2017, there were relatively few casualties amongst large yachts, because many owners heeded the warnings and had the crew, range and financial resources to relocate to safer waters in advance. However, for the mid-size and smaller yachts, even those with prudent hurricane plans in place, there was little scope for staying out of harm's way and losses were consequently high, resulting in various significant withdrawals from the US yacht insurance market.

HFW handled a number of claims as a result of last year's hurricane season and operates a 24 hour casualty response number for those in need of emergency assistance:
+44 020 7709 7702.

For more information see
www.hfwyachts.com.

Cyber piracy

Yachts are often at the forefront of technological developments in the marine sector. However, just as in commercial shipping, the subject of cyber security has been neglected by many. The yachting industry is no more or less vulnerable to a cyber event than any other industry but, due to the nature of those using and owning yachts, the yachts themselves potentially present a more tempting target for cyber criminals.

Many yacht owners and charterers continue to conduct private and professional business whilst on board. For those on board yachts with cyber security vulnerabilities, there is a real risk of a serious security breach and/or data loss. The wide reaching and powerful Wi-Fi networks available on many yachts present ample opportunity for cyber criminals to gain access, particularly where they are insecure.

From relatively simple crew training, procedural development and insurance coverage reviews to detailed system and contractual

analysis, there is much that can be done to reduce the likelihood of a cyber event impacting a yacht and otherwise to mitigate the impact of such an event.

GDPR

Yachts and the organisations that support them should by now be well aware of the coming into force of the European Union's General Data Protection Regulation (GDPR) on 25 May 2018. GDPR is set to have wide ranging effect and application, including in the yachting industry. Put simply, those holding personal data and in any way established in the EU (note: the operation of a yacht in EU waters may be enough to be considered established in the EU, even if the yacht is owned and flagged outside of the EU) should expect GDPR to apply to them.

The potential consequences of non-compliance are severe: any entity found in breach of GDPR can be fined up to 4% of its global annual revenue or €20 million, whichever is greater. For yachts owned as part of a wider property and/or business empire, the fines could be very significant indeed. For those yachts which have not already done so, particularly those operating commercially, it is now essential to establish urgently the personal data held and the lawful basis for holding such data. Where there is no lawful basis for holding it, it should be deleted and all remaining data securely stored. Crew and other employees should be educated in the use of personal data and the consequences of non-compliance for their employer. Charters and seafarers' employment contracts should be updated to provide for GDPR and the yacht owner's obligations thereunder.

We have developed a 35-minute **GDPR Awareness** training course designed to help clients of all sizes get 'GDPR ready'. For more information see
www.hfw-gdpr.com.

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HFW is an international law firm with over 500 lawyers working across our global network. We advise clients on legal issues in relation to all aspects of international commerce and we are regarded as one of the world's leading shipping law firms. The expertise, experience and reputation earned in commercial shipping are carried into our yacht practice.

Our yacht team has over 25 years experience of working in this intimate industry and our in-depth knowledge combined with our international reach ensures we are pre-eminent in the field. For more information on HFW's yachting team and the services we offer, please see www.hfwyachts.com

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