

立法會
Legislative Council

LC Paper No. CB(4)1222/15-16
(These minutes have been seen
by the Administration)

Ref : CB4/SS/6/15

**Subcommittee on Subsidiary Legislation to Give Effect to the
2006 Maritime Labour Convention**

**Minutes of first meeting
held on Tuesday, 7 June 2016, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon James TO Kun-sun (Chairman)
Hon Cyd HO Sau-lan, JP
Hon WONG Kwok-kin, SBS
Hon SIN Chung-kai, SBS, JP
Hon POON Siu-ping, BBS, MH

Member absent : Hon Frankie YICK Chi-ming, JP

**Public Officers
attending** : Agenda item II

Transport and Housing Bureau

Ms Louisa YAN
Principal Assistant Secretary for Transport and
Housing (Transport)10

Miss Winifred KAN
Assistant Secretary for Transport and Housing
(Transport)10B

Marine Department

Mr WONG Sai-fat
Assistant Director (Special Duties)

Department of Justice

Ms Mabel CHEUNG
Senior Assistant Law Draftsman (Prof. Dev)
(Acting)

Ms Elaine NG
Senior Government Counsel

Clerk in attendance : Mr Daniel SIN
Chief Council Secretary (4)3

Staff in attendance : Mr Kelvin LEE
Senior Assistant Legal Adviser 3

Mr Ambrose LEUNG
Senior Council Secretary (4)3

Ms Mandy LAM
Legislative Assistant (4)3

Ms Yvonna HO
Clerical Assistant (4)2

Action

I Election of Chairman

Mr James TO was elected Chairman of the Subcommittee.

II Meeting with the Administration

(L.N. 69 of 2016

-- Merchant Shipping
(Seafarers) (Working and
Living Conditions)
Regulation

- L.N. 70 of 2016 -- Merchant Shipping
(Seafarers) (Allotments)
(Amendment) Regulation
2016
- L.N. 71 of 2016 -- Merchant Shipping
(Seafarers) (Health and
Safety: General Duties)
(Amendment) Regulation
2016
- L.N. 72 of 2016 -- Merchant Shipping
(Seafarers) (Hours of Work)
(Amendment) Regulation
2016
- L.N. 73 of 2016 -- Merchant Shipping
(Seafarers) (Crew
Accommodation)
(Amendment) Regulation
2016
- L.N. 74 of 2016 -- Merchant Shipping
(Seafarers) (Medical
Examination) (Amendment)
Regulation 2016
- L.N. 75 of 2016 -- Merchant Shipping
(Seafarers) (Official Log
Books) (Amendment)
Regulation 2016
- L.N. 76 of 2016 -- Merchant Shipping
(Seafarers) (Repatriation)
(Amendment) Regulation
2016
- L.N. 77 of 2016 -- Merchant Shipping
(Seafarers) (Safety Officials
and Reporting of Accidents
and Dangerous Occurrences)
(Amendment) Regulation
2016

- | | |
|-------------------------------------|--|
| L.N. 78 of 2016 | -- Merchant Shipping (Seafarers) (Medical Stores) (Amendment) Regulation 2016 |
| L.N. 79 of 2016 | -- Merchant Shipping (Seafarers) (Code of Safe Working Practices) (Amendment) Regulation 2016 |
| L.N. 80 of 2016 | -- Merchant Shipping (Seafarers) (Provisions and Water) Regulation (Repeal) Regulation |
| L.N. 81 of 2016 | -- Merchant Shipping (Seafarers) (Ships' Doctors) Regulation (Repeal) Regulation |
| L.N. 82 of 2016 | -- Merchant Shipping (Seafarers) (Fees) (Amendment) Regulation 2016 |
| File Ref: THB(T)PML
CR8/10/150/8 | -- Legislative Council Brief on the Merchant Shipping (Seafarers) Ordinance (Cap. 478) Amendments to its subsidiary legislation to give effect to the 2006 Maritime Labour Convention issued by the Transport and Housing Bureau in May 2016 |
| LC Paper No. LS55/15-16 | -- Legal Service Division Report on Subsidiary Legislation Gazetted on 20 May 2016 |

- LC Paper No. CB(4)1066/15-16(01) -- Marked-up copy of the Merchant Shipping (Seafarers) (Allotments) (Amendment) Regulation 2016 prepared by the Legal Service Division (Restricted to members)
- LC Paper No. CB(4)1066/15-16(02) -- Marked-up copy of the Merchant Shipping (Seafarers) (Health and Safety: General Duties) (Amendment) Regulation 2016 prepared by the Legal Service Division (Restricted to members)
- LC Paper No. CB(4)1066/15-16(03) -- Marked-up copy of the Merchant Shipping (Seafarers) (Hours of Work) (Amendment) Regulation 2016 prepared by the Legal Service Division (Restricted to members)
- LC Paper No. CB(4)1066/15-16(04) -- Marked-up copy of the Merchant Shipping (Seafarers) (Crew Accommodation) (Amendment) Regulation 2016 prepared by the Legal Service Division (Restricted to members)
- LC Paper No. CB(4)1066/15-16(05) -- Marked-up copy of the Merchant Shipping (Seafarers) (Medical Examination) (Amendment) Regulation 2016 prepared by the Legal Service Division (Restricted to members)

- LC Paper No. CB(4)1066/15-16(06) -- Marked-up copy of the Merchant Shipping (Seafarers) (Official Log Books) (Amendment) Regulation 2016 prepared by the Legal Service Division (Restricted to members)
- LC Paper No. CB(4)1066/15-16(07) -- Marked-up copy of the Merchant Shipping (Seafarers) (Repatriation) (Amendment) Regulation 2016 prepared by the Legal Service Division (Restricted to members)
- LC Paper No. CB(4)1066/15-16(08) -- Marked-up copy of the Merchant Shipping (Seafarers) (Safety Officials and Reporting of Accidents and Dangerous Occurrences) (Amendment) Regulation 2016 prepared by the Legal Service Division (Restricted to members)
- LC Paper No. CB(4)1066/15-16(09) -- Marked-up copy of the Merchant Shipping (Seafarers) (Medical Stores) (Amendment) Regulation 2016 prepared by the Legal Service Division (Restricted to members)
- LC Paper No. CB(4)1066/15-16(10) -- Marked-up copy of the Merchant Shipping (Seafarers) (Code of Safe Working Practices) (Amendment) Regulation 2016 prepared by the Legal Service Division (Restricted to members)

- LC Paper No. CB(4)1066/15-16(11) -- Marked-up copy of the Merchant Shipping (Seafarers) (Provisions and Water) Regulation (Repeal) Regulation prepared by the Legal Service Division (Restricted to members)
- LC Paper No. CB(4)1066/15-16(12) -- Marked-up copy of the Merchant Shipping (Seafarers) (Ships' Doctors) Regulation (Repeal) Regulation prepared by the Legal Service Division (Restricted to members)
- LC Paper No. CB(4)1066/15-16(13) -- Marked-up copy of the Merchant Shipping (Seafarers) (Fees) (Amendment) Regulation 2016 prepared by the Legal Service Division (Restricted to members)
- LC Paper No. CB(4)1066/15-16(14) -- Letter from the Assistant Legal Adviser dated 1 June 2016 to the Administration
- LC Paper No. CB(4)1066/15-16(15) -- Background brief prepared by the Legislative Council Secretariat)

2. The Subcommittee deliberated (index of proceedings in the **Annex**).

3. The Chairman and Mr SIN Chung-kai said that as the Administration had adopted the "direct reference approach" in making and amending the subsidiary legislation and as confirmed by the Legal Service Division, the contents of the 14 items of the subsidiary legislation followed closely the provisions in Maritime Labour Convention 2006 ("MLC"), and since the Administration had explained the major deviations from the requirements of MLC in the local legislation, there seemed no need to examine the various sets of subsidiary legislation clause-by-clause. Members had no dissenting views on this arrangement.

Follow-up actions to be taken by the Administration

4. The Subcommittee suggested that the requirement under section 12(2)(a) of the Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation should be incorporated in section 18(2)(d)(iii) so that a seafarer recruited and placed by an agent to work on board of a ship would be given an opportunity to examine and seek advice on the agreement before entering into it. The Administration undertook to provide a written response after the meeting.

(Post-meeting note: The Administration's response dated 17 June 2016 has been circulated to members vide LC Paper No. CB(4)1141/15-16 on 20 June 2016.)

Legislative timetable

5. The Chairman said that the Subcommittee would consider the Administration's response before determining whether further meeting with the Administration was necessary.

(Post-meeting note: The Chairman, having considered the Administration's response, took the view that no further meeting of the Subcommittee would be necessary. No members dissented. The Subcommittee has completed scrutiny of the relevant subsidiary legislation.)

III Any other business

6. There being no other business, the meeting ended at 9:46 am.

**Proceedings of first meeting of the
Subcommittee on Subsidiary Legislation to Give Effect to the
2006 Maritime Labour Convention
on Tuesday, 7 June 2016, at 8:30 am
in Conference Room 3 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Agenda I — Election of Chairman			
000000 – 001242	Mr James TO Mr POON Siu-ping Mr WONG Kwok-kin	Election of Chairman	
Agenda II — Meeting with the Administration			
001243 – 001738	Chairman Administration	Briefing by the Administration	
001739 – 002013	Chairman Mr POON Siu-ping Administration	<p>Mr POON Siu-ping asked what the legal implications would be if the subsidiary legislation commenced operation after November 2016, the earliest date when the Maritime Labour Convention 2006 ("MLC") was to be extended to Hong Kong.</p> <p>The Administration advised that MLC would take effect in China in November 2016. When the necessary legislation for implementing MLC had been made, the Central People's Government would notify the International Labour Organization for extending MLC to Hong Kong. Commencement notices would thereafter be made so that the subsidiary legislation being considered by the Subcommittee would come into operation. The Administration also advised that since MLC came into operation in 2013, owners and operators of Hong Kong-registered ships were aware of the MLC requirements through Marine Department ("MD") and classification societies in Hong Kong.</p>	
002014 – 002309	Chairman Mr WONG Kwok-kin Administration	<p>Mr WONG Kwok-kin asked whether MD and relevant authorities in Hong Kong had the legal authority to take enforcement action against ocean-going vessels within Hong Kong waters that failed to comply with the requirements under MLC before the Convention was extended to, and took effect in Hong Kong.</p> <p>The Administration explained that while enforcement authorities in Hong Kong would not be able to prosecute non-compliance of MLC requirements regarding working and living conditions of seafarers, they would be able to prosecute non-compliance of requirements under the local legislation concerning</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>areas such as accommodation standards, hours of work etc.</p>	
002310 – 003547	<p>Chairman Mr SIN Chung-kai Administration</p>	<p>Mr SIN Chung-kai asked why it took some 10 years for the Administration to prepare the legislation required for the Convention to be extended to Hong Kong.</p> <p>The Administration explained that time was taken for detailed consultation with shipowners and seafarers associations, and for the making of the Merchant Shipping (Seafarers) (Amendment) Bill 2013 to provide for certain enabling provisions for the making of subsidiary legislation.</p> <p>Mr SIN Chung-kai and the Chairman queried whether there were provisions in the various pieces of subsidiary legislation where the standards of requirements were higher than those under MLC.</p> <p>The Administration informed members that according to MLC, a seafarer working onboard a ship should be at least 16 years old, whereas the minimum age of a seafarer working on board a Hong Kong ship was 17 as prescribed in section 5 of the Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (L.N. 69). Besides, the Administration further explained that the restriction under Cap. 478 which stipulated that persons aged 35 years or above cannot be registered with MD as seafarers, has been removed by the Merchant Shipping (Seafarers) (Amendment) Ordinance 2013. The other provisions closely follow the requirements and standards of MLC.</p>	
003548 – 004040	<p>Chairman Senior Assistant Legal Adviser 3 (SALA3) Mr POON Siu-ping Administration</p>	<p>At the invitation of the Chairman, SALA3 pointed out that under section 12(3) of L.N. 69, a shipowner must ensure that a seafarer must be given a signed original of the written employment agreement. However, in case where the seafarer was recruited through an agent, the agent was only required to have measures in place to ensure that the seafarer received a copy of the agreement under section 18(2)(d) of L.N. 69. Mr POON Siu-ping and the Chairman queried the reasons for the discrepancy.</p> <p>The Administration explained that where a seafarer was recruited through an agent, it remained the responsibility of the shipowner to ensure that the seafarer was given a signed original of the employment.</p>	

Time marker	Speaker	Subject(s)	Action required
004041 – 010304	Chairman Administration	<p>The Chairman pointed out that under section 12(2)(a) of L.N. 69, a seafarer must be given an opportunity to examine and seek advice on the employment agreement before entering into it. However, under section 18(2)(d)(iii), the agent engaged to recruit seafarers on behalf of the shipowner was only required to have measures in place to ensure that the seafarer might examine the employment agreement before it was signed.</p> <p>The Chairman asked if the Administration would consider reflecting the requirement under section 12(2)(a) (which stipulated that a seafarer should be given an opportunity to seek advice on an employment agreement before entering into it) in section 18(2)(d)(iii) as well.</p> <p>The Administration undertook to consider members' suggestion and would provide a written response after the meeting.</p>	The Administration to follow up as per paragraph 4 of the minutes
010305 – 010933	Chairman SALA3 Administration	<p>At the invitation of the Chairman, SALA3 informed members that sections 28, 34 and 39 of L.N. 69 imposed a duty on the master of a ship to keep a proper record on different matters in relation to the accommodation, recreational and communication facilities, provisions and drinking water of the seafarers.</p> <p>SALA3 said that L.N. 69 provided that the facilities must be regularly inspected, and a record of inspection must be kept. Sections 28(5) and 34(5) specify the types of information that should be contained in the record of inspection in respect of accommodation, recreational and communication facilities.</p> <p>However, there was no corresponding provision under section 39 of L.N. 69 for the records of inspection in respect of provisions and drinking water.</p> <p>The Chairman queried the justification of the discrepancy as it appeared that provisions and drinking water should be as important as accommodation, recreation and communication facilities.</p> <p>The Administration explained to the Subcommittee that it was already required under existing legislation</p>	

Time marker	Speaker	Subject(s)	Action required
		for the master of a ship to keep records of provisions and drinking water in an official log book, and the details were therefore not repeated in L.N. 69.	
010934 – 011110	Chairman SALA3 Administration	<p>At the invitation of the Chairman, SALA3 briefed members that under section 2, in the definition of "Ships' Cooks Convention", the title "Certification of Ships' Cooks Convention, 1946" was rendered as "1946 年船上廚師發證書公約" in the Chinese text. Members noted that in the Chinese text of paragraph 3 of Guideline B3.2.2. to 2006 Maritime Labour Convention, the above title was rendered as "1946 年船上廚師發證書公約".</p> <p>The Administration informed the Subcommittee that there was no authentic Chinese version of the title, but it agreed that suitable amendment would be made to L.N. 69 to adopt "1946 年船上廚師發證書公約" as the Chinese title.</p>	
011111 – 011230	Chairman Mr SIN Chung-kai Administration	<p>The Chairman and Mr SIN Chung-kai said that as the Administration had adopted the "direct reference approach" in making and amending the subsidiary legislation and, as confirmed by the Legal Service Division, the contents of the subsidiary legislation followed closely the provisions in MLC, and since the Administration had explained the major deviations from the requirements of MLC in the local legislation, there seemed no need to examine the various sets of subsidiary legislation clause-by-clause. Members had no dissenting views on this arrangement.</p>	
Agenda III — Any other business			
011231 – 011400	Chairman	<p>The Chairman said that the Subcommittee would consider whether further meetings should be held pending the Administration's response on the Subcommittee's suggestion of amendment to section 18(2)(d)(iii) of the proposed Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation.</p> <p>Meanwhile, the Chairman said that he would move a motion at the Council Sitting on 15 June 2016 to extend the scrutiny period to 13 July 2016.</p> <p><i>(Post-meeting note: The Administration responded to the Subcommittee's suggested amendment. The Chairman was of the view that no further meeting was necessary. Members had no objection to the</i></p>	

Time marker	Speaker	Subject(s)	Action required
		arrangement. The Chairman also withdrew his notice of motion to extend the scrutiny period on 20 June 2016.)	

Council Business Division 4
Legislative Council Secretariat
6 July 2016