



中華人民共和國香港特別行政區
Hong Kong Special Administrative Region of the People's Republic of China



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF : THB(T)PML CR 8/10/150/8
本函檔號 OUR REF : LS/S/24(1)(a)/15-16
電話 TELEPHONE : 3919 3506

傳真 FAX : 2877 5029
電郵 E-MAIL : ahychui@legco.gov.hk

By Fax (2523 0030)

1 June 2016

Ms Louisa YAN
Principal Assistant Secretary for Transport and Housing
(Transport) 10
Transport and Housing Bureau
21/F, East Wing
Central Government Offices
2 Tim Mei Avenue
Tamar
Hong Kong

Dear Ms YAN,

**Merchant Shipping (Seafarers)
(Working and Living Conditions) Regulation (L.N. 69)**

I am scrutinizing the captioned Regulation with a view to advising Members on its legal and drafting aspects. To facilitate Members' consideration of the Regulation at the forthcoming Subcommittee meeting scheduled on 7 June 2016, I should be grateful if you would clarify the following matters.

Part 1: Legal Issues

Section 18(2)(d)

Section 18(2)(d) imposes certain duties on an agent in recruiting a seafarer. Unlike section 12(2)(b)(ii) concerning recruitment of seafarers by shipowners, no duty is imposed under section 18(2)(d) on the agent to ensure that the seafarer enters into the agreement freely. Besides, instead of a signed original of the agreement as stated in section 12(3), only a copy of the agreement is required to be provided to the seafarer by the agent under section 18(2)(d). Should the above duties in sections 12(2)(b)(ii) and 12(3) be also adopted in section 18(2)(d)?

Section 39

Sections 28, 34 and 39 all impose a duty on the master of a ship to keep a proper record on different matters in relation to the accommodation, recreational and communications facilities, provisions and drinking water of the seafarers. Unlike sections 28 and 34, section 39 does not specify the types of information such as sections 28(5) and 34(5) that should be contained in the record of inspection. Please clarify the legislative intent and justification for adopting a different requirement in section 39.

Part 2: Drafting Issues

Section 2

Under section 2, in the definition of "Ships' Cooks Convention", the Certification of Ships' Cooks Convention, 1946 is rendered as "1946 年船上廚師發證書公約" in the Chinese text. We wish to point out that in the Chinese text of paragraph 3 of Guideline B3.2.2 to 2006 Maritime Labour Convention ("MLC"), "the Certification of Ships' Cooks Convention, 1946" is rendered as "1946 年船上廚師發證公約". Please clarify which Chinese expression is correct. Should the expression in the Chinese text of MLC be adopted in L.N. 69?

Section 18(2)(a)

Regarding section 18(2)(a), the term "list" in the English text is rendered as "名單或清單" in the Chinese text. However, the term "list" in the Chinese text of paragraph 5(a) of Standard A1.4 to MLC only includes the meaning of "清單". Please clarify the legislative intent and the justification for adopting a different expression in the Chinese text in L.N. 69.

Sections 22(2)(b) and 22(5)

Regarding section 22(2)(b), we believe that that it is more appropriate to use the term "亦同時採用英文" in the Chinese text to reflect that the English version of a table of a schedule of service and rest is additional to such a table in the working language of the crew of the ship.

Regarding section 22(5), the term "endorsed" in the English text is rendered as "批註" in the Chinese text. We wish to point out that the term "endorsed" in the Chinese text of paragraph 12 of Standard A2.3 to MLC is

rendered as "簽字認可". We believe that it is more appropriate to use the expression in the Chinese text of MLC or the expression of "簽註" (as used in rule 8(11) of the Trainee Solicitors Rules Cap. 159J) to reflect that, except the master or his authorized person and the seafarer, no other person is required to adopt or approve the above record.

We would be grateful for your reply in both Chinese and English language on or before 3 June 2016.

Yours sincerely,



(CHUI Ho-yin, Alvin)
Assistant Legal Adviser

c.c. Marine Department
(Attn.: Mr Y M CHENG, Assistant Director, Shipping)
(Fax: 3101 0026)

Department of Justice
(Attn.: Ms Mabel CHEUNG, Senior Assistant Law Draftsman
(Professional Development) (Acting)
Miss Elaine NG, Senior Government Counsel)
(Fax: 3918 4613)

Clerk to Subcommittee
Legal Adviser
Senior Assistant Legal Adviser 3