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

Background brief

Purpose

This paper provides background information on the proposed amendments to the subsidiary legislation of the Merchant Shipping (Seafarers) Ordinance (Cap. 478) to implement the 2006 Maritime Labour Convention ("MLC") adopted by the International Labour Organization ("ILO"). It also summarizes the previous views and concerns expressed by the Panel on Economic Development ("the Panel").

Background

2. MLC was adopted at the International Labour Conference held in February 2006. Apart from consolidating and updating the existing ILO requirements for the employment of seafarers, MLC also includes more comprehensive minimum standards for the working conditions of seafarers to secure the right of all seafarers to decent employment. These minimum standards cover, inter alia, conditions of employment, hours of work and hours of rest, on-board accommodation, recreational facilities, food and catering, medical care, etc. The objective of the Convention is to ensure comprehensive worldwide protection of the rights of seafarers and to establish a level playing field for countries and shipowners by preventing unfair competition from substandard ships and operations.

3. MLC entered into force globally on 20 August 2013, and will enter into force in the Mainland of China on 12 November 2016. The Convention will be extended to Hong Kong after the Central People's Government has notified ILO and the making of the relevant subsidiary legislation. According to the Administration, the implementation of MLC

requirements would not only help enhance the working and living conditions of seafarers on board Hong Kong ships, but it would also avoid detention of Hong Kong ships by overseas port state control due to the lack of proper maritime labour certificate required under MLC.

The subsidiary legislation

4. The Secretary for Transport and Housing ("STH") has made L.N. 69 to L.N. 81 under the various sections of Cap. 478 to implement the relevant requirements prescribed in MLC and to make consequential and related amendments. The Secretary for Financial Services and the Treasury has made L.N. 82 to prescribe fees for the inspection and certification of ships conducted by the Marine Department ("MD") pursuant to MLC under sections 133 and 134 of Cap. 478.

5. L.N. 69 to L.N. 82 were gazetted on 20 May 2016 and tabled in the Legislative Council on 25 May 2016. They will come into operation on a day to be appointed by STH by notice published in the Gazette.

6. Details of the legislative proposals are set out in paragraphs 5 to 10 of the Legislative Council Brief (File Ref: THB(T)PML CR 8/10/150/8) issued by the Administration in May 2016. A summary of the provisions and their effects are set out in paragraph 8 of the Legal Service Division Report on Subsidiary Legislation Gazetted on 20 May 2016 (LC Paper No. LS55/15-16), and are recapitulated as follows:

- (a) L.N. 69 is a new regulation made to implement the major requirements of the Convention covering 16 areas applicable to certain seagoing ships engaged in commercial activities ("regulated ships") such as the minimum requirements for seafarers to work on board a ship (for example, the age of work and hours of rest), the requirements relating to employment contracts and working conditions, the standard of accommodation, the provision of recreational facilities, medical care, food and catering, and financial security to provide assistance to seafarers when abandoned. It also contains the certification requirements and requirements for compliance reports for regulated ships, and provisions that deal with the enforcement and other powers of the Seafarers' Authority;
- (b) L.N. 70 amends the Merchant Shipping (Seafarers) (Allotments) Regulation (Cap. 478A) to provide that certain

seafarers may allot all or a part of their wages to other persons under section 4 of Cap. 478A and that the restriction on the allotment of wages under section 5 of Cap. 478A only applies to seafarers employed to work on coastal-going ships but not to those employed to work on seagoing ships;

- (c) L.N. 71 amends the Merchant Shipping (Seafarers) (Health and Safety: General Duties) Regulation (Cap. 478C) to provide that the employer's duty under section 4(1) of Cap. 478C to ensure the health and safety of seafarers and other persons on board a ship is expanded to include the duty to adopt, implement and promote occupational safety and health policies and programmes, and the duty to adopt precautions to prevent occupational accidents, injuries and diseases on board the ship. It also makes certain drafting amendments;
- (d) L.N. 72 amends the Merchant Shipping (Seafarers) (Hours of Work) Regulation (Cap. 478D) to confine its application to coastal-going ships registered in Hong Kong or coastal-going ships within the waters of Hong Kong and to make other technical and drafting amendments. It also amends the title of Cap. 478D by replacing "hours of work" by "hours of rest";
- (e) L.N. 73 amends the Merchant Shipping (Seafarers) (Crew Accommodation) Regulation (Cap. 478I) mainly to provide that the existing requirements relating to the accommodation and recreational facilities for seafarers under Cap 478I applies to, among others, Hong Kong ships constructed before the date on which L.N. 73 comes into operation and to provide for offence provisions regarding the contravention of the existing requirements. The maximum penalty for the new offences is a fine at level 5 (\$50,000);
- (f) L.N. 74 amends the Merchant Shipping (Seafarers) (Medical Examination) Regulation (Cap. 478O) to update the medical standards, requirements and criteria for seafarers and the requirements on the issuance of medical fitness certificates;
- (g) L.N. 75 amends the Merchant Shipping (Seafarers) (Official Log Books) Regulation (Cap. 478P) mainly to update the entries required to be made in official log books

kept in ships in the Schedule to Cap. 478P consequential to the provisions in L.N. 69;

- (h) L.N. 76 amends the Merchant Shipping (Seafarers) (Repatriation) Regulation (Cap. 478Q) to implement the requirements of the Convention regarding repatriation of seafarers. The amendments include providing for additional circumstances under which seafarers are entitled to be repatriated (such as the expiry of the crew agreement) and the employers' obligations in repatriation, and requiring a copy of Cap. 478Q to be kept on board Hong Kong ships;
- (i) L.N. 77 amends the Merchant Shipping (Seafarers) (Safety Officials and Reporting of Accidents and Dangerous Occurrences) Regulation (Cap. 478R) to implement certain requirements of the Convention relating to the health and safety protection of seafarers such as the duty to report occupational diseases contracted by the seafarers employed on certain seagoing ships that arise out of their employment. The title of Cap. 478R is also amended to reflect that Cap. 478R also deals with the reporting of occupational diseases;
- (j) L.N. 78 amends the Merchant Shipping (Seafarers) (Medical Stores) Regulation (Cap. 478X) to update, in compliance with the latest international standards, the requirements relating to medicines and medical stores. The amendments provide, among others, that seagoing ships, and passenger-carrying ships that only trade within river trade limits, must keep on board medicines and medical stores in compliance with the prescribed requirements and expired medicines and medical stores must be taken to a pharmacy for destruction;
- (k) L.N. 79 amends the Merchant Shipping (Seafarers) (Code of Safe Working Practices) Regulation (Cap. 478M) to reflect the change in title of Cap. 478R as mentioned in paragraph 6(i) above;
- (l) L.N. 80 and L.N. 81 respectively repeal the Merchant Shipping (Seafarers) (Provisions and Water) Regulation (Cap. 478E) and the Merchant Shipping (Seafarers) (Ships' Doctors) Regulation (Cap. 478H), as the updated requirements have been provided in L.N. 69; and

- (m) L.N. 82 amends the Merchant Shipping (Seafarers) (Fees) Regulation (Cap. 478AB) to provide for fees payable for the inspection of ships and the issue of certain certificates under L.N. 69, to update the definition of office hours and make related amendments, and to amend the fees payable for certain examinations.

Views and concerns expressed by the Panel on Economic Development

7. At the Panel meeting on 11 December 2012, the Administration consulted Panel members on the proposal to amend Cap. 478 and its subsidiary legislation. Panel members were also consulted on a new subsidiary legislation to be made for implementing the requirements under MLC. Members were generally supportive of the legislative proposal. Some of the issues covered in the subsidiary legislation were also discussed in the meetings of the Bills Committee to study the Merchant Shipping (Seafarers) (Amendment) Bill 2013 which was formed at the House Committee meeting on 26 April 2013.

8. The relevant views expressed by Panel members as well as Bills Committee members related to the implementation of the MLC requirements are summarized in the ensuing paragraphs.

Applicability to cross-boundary passenger ships and river trade vessels

9. Members asked if the proposed subsidiary legislation would cover crew members working on passenger ships plying between Hong Kong and Macao. The Administration responded that, in accordance with MLC, the proposed legislative amendments would apply to ships registered in Hong Kong, of 500 gross tonnage or over and engaged in international voyages. In formulating the legislative proposals, a tripartite working group comprising representatives of the Government, of seafarers and of shipowners had been formed. The tripartite working group had reached a consensus that requirements under the Convention would not be applicable to ships other than those engaged in international voyages. Provisions relating to the working conditions of crew members on cross-boundary passenger ships as well as local vessels were already prescribed in existing legislation.

Working and living conditions of seafarers

Right of request for repatriation to their place of origin

10. Some members have enquired about the circumstances under which seafarers were entitled, under the proposed amendments, to request for repatriation to their place of origin without paying for the relevant expenses. The Administration advised that the proposal applied to situations where, for example, a seafarer suffered from serious sickness or injury, the ship was involved in an accident, the ship owner became bankrupt, or where the seafarer refused to continue to work on the ship which would enter a war zone.

Right to collective bargaining and retirement protection

11. Some members expressed concern that MLC did not cover retirement protection for seafarers and that the legislative proposals did not include the seafarers' right to collective bargaining. Some members have requested the Administration to take the opportunity to include the right to collective bargaining.

12. The Administration explained that the proposed legislative amendments were in line with international standards and the Convention did not require legislation on the right to collective bargaining. As there was no clear consensus in society, the Administration considered that it was inappropriate to incorporate the right to collective bargaining into the Bill. The Administration informed members that the Government would encourage voluntary negotiations between employers or employers' associations and employees unions, and MD would accept crew agreements drawn up through collective bargaining.

13. As regards retirement protection of seafarers, the Administration explained that the matter would be governed by the respective legislation of the place where the ships in which the seafarers worked were registered.

Medical certification

14. Members noted that MLC required that all on-board seafarers should hold a valid medical fitness certificate attesting that they were medically fit to perform duties on board. Some members have expressed concern that the requirement might discourage newcomers to become seafarers. The Administration explained that the requirements under MLC were comparable with the existing ones prescribed in the Merchant Shipping

(Seafarers) (Medical Examination) Regulation (Cap. 478 sub. leg. O) and could help ensure that seafarers were physically fit for working on board.

Hours of work and rest

15. Some members considered that the requirements in the Convention regarding normal working hours' standard for seafarers might not match the operational arrangements on board as marine navigation frequently encounters emergencies and ad hoc situations. The Administration had consulted the tripartite working group and the Seafarers' Advisory Board. The two bodies agreed to adopting the standards that normal working hours should not be less than ten hours in any 24-hour period and should not be less than 77 hours in any seven-day period. The hours of rest might be divided into no more than two periods, one of which should be at least six hours in length, and the interval between consecutive periods of rest should not exceed 14 hours. Any working hour(s) exceeding eight hours will be deemed as "overtime".

Seafarers' employment agreements

16. Members noted that Cap. 478 did not specify a minimum notice period for termination of a crew agreement, but it stipulated that a seafarer would be entitled to an unemployment indemnity equivalent to a maximum of two months' wages if his or her employment agreement was terminated prematurely under various circumstances and the seafarer is not able to obtain suitable employment. On the other hand, members pointed out that MLC stipulated that the minimum notice period to be given by the seafarers and shipowners for the early termination of a crew agreement must not be shorter than seven days, and the Convention did not specify the amount of compensation upon termination of employment.

17. Some members have expressed concern that such discrepancy might give rise to confusion among seafarers and employers. The Administration advised that after consulting the tripartite working group and the Seafarers' Advisory Board, the Administration would require under the proposed subsidiary legislation a notice period of not less than seven days for termination of employment agreement by either side. This requirement would not affect the existing statutory provisions on unemployment indemnity.

On-board complaint procedures

18. Members noted that under the Convention, seafarers would have a right to complain to the master or directly to the competent authority, viz.

MD in the case of Hong Kong. Members and some trade union representatives have expressed concern whether MD was capable of investigating into the complaints from seamen and, in case the complaint involved illegal practice, whether it could take enforcement actions under relevant legislation appropriately and effectively. The Administration advised that MD would investigate the case and take necessary enforcement actions on receiving any complaint about illegal practice. If the seafarer's complaint involved no illegal practice, MD, after understanding the case, would facilitate communication between the shipowner and seafarers in solving the problem. As MD had all along provided all Hong Kong-registered ships with on-board complaint procedures, the Administration would also incorporate requirements on on-board complaint procedures under the Convention into the subsidiary legislation.

Compliance and enforcement

19. Some members queried about the arrangement between the period when MLC took effect in August 2013 and before the relevant proposed subsidiary legislation was put into operation, so that ships registered in Hong Kong would not encounter problem when visiting overseas ports. The Administration explained that it would authorize recognized organizations to issue provisional compliance certificates to ships which met the requirements stipulated under the Convention, in order to enable the ships to operate in overseas countries.

20. A Maritime Labour Certificate, valid for five years, will be issued by MD or a classification society (which is recognized by the Government to provide survey and certification services for Hong Kong-registered ships) on behalf of MD.

21. If a ship is found to conform to the requirements of MLC after inspection by a Government surveyor or a "Recognized Organization" (i.e. a classification society recognized by the Government to provide survey and certification services for Hong Kong-registered ships), MD, or a Recognized Organization, would issue the shipowner with a Maritime Labour Certificate which is valid for five years. Renewal of the Certificate was subject to inspection. In response to members' queries, the Administration informed members that the scope of inspection for renewal of the Maritime Labour Certificate was the same as that for certificate issuance, and the Administration would examine ways to streamline the renewal procedures.

Latest development

22. At the meeting of the House Committee held on 27 May 2016, Members agreed that a subcommittee should be formed to examine the subsidiary legislation in detail.

Relevant papers

23. A list of relevant papers with the hyperlink is at –

[http://sobfle02.legco.hksar/sharedoc/r&d/Amendments_to_its_subsidary legislative_to_give_effect_to_the_2006_Maritime_Labour_Convention-e.pdf](http://sobfle02.legco.hksar/sharedoc/r&d/Amendments_to_its_subsidary_legislative_to_give_effect_to_the_2006_Maritime_Labour_Convention-e.pdf)

<http://www.legco.gov.hk/yr12-13/english/panels/e/dev/papers/e/dev1211cb1-260-3-e.pdf>

<http://www.legco.gov.hk/yr12-13/english/panels/e/dev/minutes/e/dev20121211.pdf>

<http://www.legco.gov.hk/yr12-13/english/bc/bc06/reports/bc061106cb1-103-e.pdf>

<http://www.legco.gov.hk/yr15-16/english/hc/papers/hc20160527ls-55-e.pdf>

Council Business Division 4
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