

LEGISLATIVE COUNCIL BRIEF

Commencement of the amendments to the Merchant Shipping (Seafarers) Ordinance (Cap. 478) and its subsidiary legislation for the entry into force of the 2006 Maritime Labour Convention in Hong Kong

INTRODUCTION

The 2006 Maritime Labour Convention (“MLC”) will be extended to Hong Kong on 20 December 2018. To bring into operation the provisions in the Merchant Shipping (Seafarers) Ordinance (Cap. 478) (“the Ordinance”) and its subsidiary legislation that implement the requirements of the MLC, as well as a provision in the Schedule to the Administrative Appeals Board Ordinance (Cap. 442) which relates to the MLC, the Secretary for Transport and Housing (“STH”) has made the following 15 commencement notices —

A

(a) Merchant Shipping (Seafarers) (Amendment) Ordinance 2013 (Commencement) Notice 2018 (at **Annex A**);

B

(b) Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (Commencement) Notice (at **Annex B**);

C

(c) Merchant Shipping (Seafarers) (Allotments) (Amendment) Regulation 2016 (Commencement) Notice (at **Annex C**);

D

(d) Merchant Shipping (Seafarers) (Health and Safety: General Duties) (Amendment) Regulation 2016 (Commencement) Notice 2018 (at **Annex D**);

E

(e) Merchant Shipping (Seafarers) (Hours of Work) (Amendment) Regulation 2016 (Commencement) Notice (at **Annex E**);

F

(f) Merchant Shipping (Seafarers) (Crew Accommodation) (Amendment) Regulation 2016 (Commencement) Notice (at **Annex F**);

G

(g) Merchant Shipping (Seafarers) (Official Log Books) (Amendment) Regulation 2016 (Commencement) Notice (at **Annex G**);

H

(h) Merchant Shipping (Seafarers) (Repatriation) (Amendment) Regulation 2016 (Commencement) Notice (at **Annex H**);

I

(i) Merchant Shipping (Seafarers) (Safety Officials and Reporting of Accidents and Dangerous Occurrences) (Amendment) Regulation 2016 (Commencement) Notice (at **Annex I**);

- J (j) Merchant Shipping (Seafarers) (Medical Stores) (Amendment) Regulation 2016 (Commencement) Notice (at Annex J);
- K (k) Merchant Shipping (Seafarers) (Code of Safe Working Practices) (Amendment) Regulation 2016 (Commencement) Notice (at Annex K);
- L (l) Merchant Shipping (Seafarers) (Provisions and Water) Regulation (Repeal) Regulation (Commencement) Notice (at Annex L);
- M (m) Merchant Shipping (Seafarers) (Ship’s Doctors) Regulation (Repeal) Regulation (Commencement) Notice (at Annex M);
- N (n) Merchant Shipping (Seafarers) (Fees) (Amendment) Regulation 2016 (Commencement) Notice (at Annex N); and
- O (o) Administrative Appeals Board Ordinance (Amendment of Schedule) Order 2016 (Commencement) Notice (at Annex O).

2. Separately, to reflect the outcome of the discussion of the Legislative Council (“LegCo”) Subcommittee on Subsidiary Legislation to Give Effect to the 2006 Maritime Labour Convention (“the Subcommittee”), and to incorporate a few textual and consequential amendments, STH has made the following two amendment regulations under the Ordinance –

- P (a) Merchant Shipping (Seafarers) (Working and Living Conditions) (Amendment) Regulation 2018 (at Annex P); and
- Q (b) Merchant Shipping (Seafarers) (Official Log Books) (Amendment) Regulation 2016 (Amendment) Regulation 2018 (at Annex Q).

BACKGROUND

3. Promulgated by the International Labour Organization (“ILO”), the MLC sets out a comprehensive set of global standards for the working and living conditions of seafarers and seeks to protect the welfare of seafarers. The MLC entered into force globally on 20 August 2013. To prepare for the extension of the MLC to Hong Kong¹, the Merchant Shipping (Seafarers) (Amendment) Ordinance 2013 (“the 2013 Ordinance”) was enacted in 2013 to align the provisions under the Ordinance with the requirements in the MLC.

¹ As Hong Kong is not a member of the ILO, the MLC will only take effect in Hong Kong if China extends its application to Hong Kong. The Central People’s Government’s assistance has been sought in extending the MLC to Hong Kong. ILO has recently notified us that the MLC would come into force in Hong Kong on 20 December 2018.

4. In 2016, one new regulation, 11 amendment regulations and two repeal regulations (collectively referred to as “2016 Regulations”) were introduced into the LegCo to incorporate the detailed requirements of the MLC into the subsidiary legislation under the Ordinance. The Subcommittee was formed to scrutinise the 2016 Regulations. The Subcommittee suggested that the 2016 Regulations make an express provision relating to the requirement that seafarers recruited and placed by an agent to work on board of a ship be given an opportunity to examine and seek advice on their employment agreement before entering into it. The Administration took on board the suggestion and agreed to make the relevant amendment when bringing the 2016 Regulations into operation. To implement such amendment, STH thus makes the Amendment Regulation elaborated in paragraph 8.

5. In August 2018, ILO announced that the MLC would come into force in Hong Kong on 20 December 2018.

LEGISLATIVE PROPOSALS

Commencement of the 2013 Ordinance and the 2016 Regulations

6. The 14 commencement notices in paragraph 1(a) to (n) seek to bring into operation the provisions in the 2013 Ordinance and 13 pieces of the 2016 Regulations² for implementing the MLC which will come into force in Hong Kong on 20 December 2018.

7. The commencement notice in paragraph 1(o) seeks to bring into operation a consequential amendment made to the Schedule to the Administrative Appeals Board Ordinance (Cap. 442), so that a party aggrieved by the decision made by the Seafarers’ Authority, i.e. the Director of Marine, under certain provisions in the Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation may appeal to the Administrative Appeals Board.

Amendments to the Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (“WL Regulation”) to incorporate the suggestions of the Subcommittee

8. The MLC requires, amongst other things, that seafarers working on board a ship must have entered into a written employment agreement with the employer and be given an opportunity to examine and seek advice on the agreement before entering into it. This requirement is reflected in the WL Regulation. During the examination of the 2016 Regulations, the Subcommittee suggested and the Administration agreed to

² Out of the 14 pieces of the 2016 Regulations, one of them, namely the Merchant Shipping (Seafarers) (Medical Examination) (Amendment) Regulation 2016, already came into operation on 1 December 2016 for the implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers in Hong Kong. Thus, there is no need to bring this Regulation into operation in the current legislative exercise.

put the protection beyond doubt by adding to the WL Regulation the requirement that a recruitment agent of seafarers operating in a country that is not a party to the MLC must have measures in place to ensure that the seafarers may examine and seek advice on the employment agreement before entering into it. STH has therefore made the Merchant Shipping (Seafarers) (Working and Living Conditions) (Amendment) Regulation to effect the above requirement. The opportunity is also taken to make a few textual amendments to the WL Regulation to improve its clarity and to rectify a few textual errors.

Consequential amendments to the Merchant Shipping (Seafarers) (Official Log Books) (Amendment) Regulation 2016 (“OLB Amendment Regulation”)

9. The OLB Amendment Regulation made in May 2016 updated the requirements of official log books kept on vessels as stipulated in the Merchant Shipping (Seafarers) (Official Log Books) Regulation (Cap. 478P) (“the OLB Regulation”) for implementing the MLC. Due to the amendments made in December 2016 to the subsidiary legislation under the Merchant Shipping (Safety) Ordinance (Cap. 369), there is a need to introduce consequential amendments to the OLB Regulation to ensure consistency between the two subsidiary legislations given the cross-referencing therein.

10. For this purpose, STH has made the Merchant Shipping (Seafarers) (Official Log Books) (Amendment) Regulation 2016 (Amendment) Regulation 2018 to revise certain references in the OLB Regulation.

LEGISLATIVE TIMETABLE

11. The 15 commencement notices and the two amendment regulations will be gazetted on 19 October 2018 and introduced into the LegCo on 24 October 2018 for negative vetting.

IMPLICATIONS OF THE PROPOSAL

12. The proposal has no economic, productivity, competition, financial, family, gender, civil service, environmental or sustainability implications. It is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of the Ordinance.

PUBLIC CONSULTATION

13. The trade has been informed of the date of the extension of the MLC to Hong Kong and the commencement of the local legislation implementing the MLC. All ships should have already complied with the requirements of MLC.

PUBLICITY

14. A press release will be issued on 19 October 2018. A spokesman will be available to answer enquires.

ENQUIRIES

15. Any enquiries on this brief can be addressed to Ms Louisa Yan, Principal Assistant Secretary for Transport and Housing (Transport) (Tel: 3509 8162) or Mr Y.M. Cheng, Assistant Director, Shipping, Marine Department (Tel: 2852 4404).

**Transport and Housing Bureau
October 2018**

Merchant Shipping (Seafarers) (Amendment) Ordinance 2013 (Commencement)
Notice 2018

1

**Merchant Shipping (Seafarers) (Amendment)
Ordinance 2013 (Commencement) Notice 2018**

Under section 1(2) of the Merchant Shipping (Seafarers) (Amendment) Ordinance 2013 (16 of 2013), I appoint 20 December 2018 as the day on which the uncommenced provisions of the Ordinance (except Subdivisions 3, 4, 6 and 8 of Division 1 of Part 3) come into operation.


Secretary for Transport and Housing

12 Oct 2018

Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation
(Commencement) Notice

1

**Merchant Shipping (Seafarers) (Working and Living
Conditions) Regulation (Commencement) Notice**

Under section 1 of the Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (Cap. 478 sub. leg. AF), I appoint 20 December 2018 as the day on which the Regulation comes into operation.

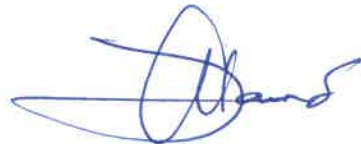


Secretary for Transport and Housing

12 Oct 2018

**Merchant Shipping (Seafarers) (Allotments)
(Amendment) Regulation 2016 (Commencement) Notice**

Under section 1 of the Merchant Shipping (Seafarers) (Allotments) (Amendment) Regulation 2016 (L.N. 70 of 2016), I appoint 20 December 2018 as the day on which the Regulation comes into operation.



Secretary for Transport and Housing

12 Oct 2018

Merchant Shipping (Seafarers) (Health and Safety: General Duties) (Amendment)
Regulation 2016 (Commencement) Notice 2018

1

**Merchant Shipping (Seafarers) (Health and Safety:
General Duties) (Amendment) Regulation 2016
(Commencement) Notice 2018**

Under section 1 of the Merchant Shipping (Seafarers) (Health and Safety:
General Duties) (Amendment) Regulation 2016 (L.N. 71 of 2016), I appoint
20 December 2018 as the day on which section 4 of the Regulation comes
into operation.



Secretary for Transport and Housing

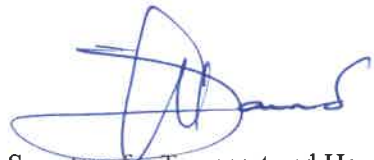
12 Oct 2018

Merchant Shipping (Seafarers) (Hours of Work) (Amendment) Regulation 2016
(Commencement) Notice

1

**Merchant Shipping (Seafarers) (Hours of Work)
(Amendment) Regulation 2016 (Commencement) Notice**

Under section 1 of the Merchant Shipping (Seafarers) (Hours of Work) (Amendment) Regulation 2016 (L.N. 72 of 2016), I appoint 20 December 2018 as the day on which the Regulation comes into operation.



Secretary for Transport and Housing

12 Oct 2018

Merchant Shipping (Seafarers) (Crew Accommodation) (Amendment) Regulation
2016 (Commencement) Notice

1

**Merchant Shipping (Seafarers) (Crew Accommodation)
(Amendment) Regulation 2016 (Commencement) Notice**

Under section 1 of the Merchant Shipping (Seafarers) (Crew Accommodation) (Amendment) Regulation 2016 (L.N. 73 of 2016), I appoint 20 December 2018 as the day on which the Regulation comes into operation.



Secretary for Transport and Housing

12 Oct 2018

Merchant Shipping (Seafarers) (Official Log Books) (Amendment) Regulation 2016
(Commencement) Notice

1

**Merchant Shipping (Seafarers) (Official Log Books)
(Amendment) Regulation 2016 (Commencement) Notice**

Under section 1 of the Merchant Shipping (Seafarers) (Official Log Books) (Amendment) Regulation 2016 (L.N. 75 of 2016), I appoint 20 December 2018 as the day on which the Regulation comes into operation.



Secretary for Transport and Housing

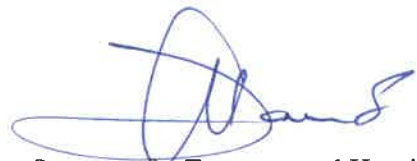
12 Oct 2018

Merchant Shipping (Seafarers) (Repatriation) (Amendment) Regulation 2016
(Commencement) Notice

1

**Merchant Shipping (Seafarers) (Repatriation)
(Amendment) Regulation 2016 (Commencement) Notice**

Under section 1 of the Merchant Shipping (Seafarers) (Repatriation) (Amendment) Regulation 2016 (L.N. 76 of 2016), I appoint 20 December 2018 as the day on which the Regulation comes into operation.



Secretary for Transport and Housing

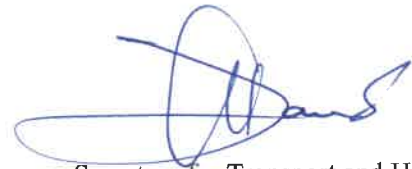
12 Oct 2018

Merchant Shipping (Seafarers) (Safety Officials and Reporting of Accidents and Dangerous Occurrences) (Amendment) Regulation 2016 (Commencement) Notice

1

Merchant Shipping (Seafarers) (Safety Officials and Reporting of Accidents and Dangerous Occurrences) (Amendment) Regulation 2016 (Commencement) Notice

Under section 1 of the Merchant Shipping (Seafarers) (Safety Officials and Reporting of Accidents and Dangerous Occurrences) (Amendment) Regulation 2016 (L.N. 77 of 2016), I appoint 20 December 2018 as the day on which the Regulation comes into operation.



Secretary for Transport and Housing

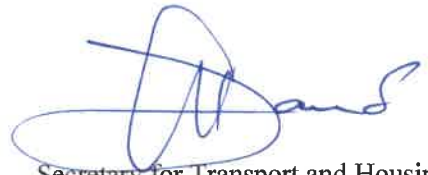
12 Oct 2018

Merchant Shipping (Seafarers) (Medical Stores) (Amendment) Regulation 2016
(Commencement) Notice

1

**Merchant Shipping (Seafarers) (Medical Stores)
(Amendment) Regulation 2016 (Commencement) Notice**

Under section 1 of the Merchant Shipping (Seafarers) (Medical Stores) (Amendment) Regulation 2016 (L.N. 78 of 2016), I appoint 20 December 2018 as the day on which the Regulation comes into operation.



Secretary for Transport and Housing

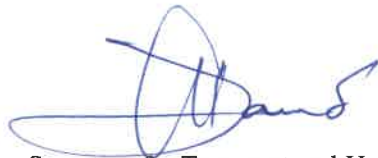
12 Oct 2018

Merchant Shipping (Seafarers) (Code of Safe Working Practices) (Amendment)
Regulation 2016 (Commencement) Notice

1

**Merchant Shipping (Seafarers) (Code of Safe Working
Practices) (Amendment) Regulation 2016
(Commencement) Notice**

Under section 1 of the Merchant Shipping (Seafarers) (Code of Safe Working Practices) (Amendment) Regulation 2016 (L.N. 79 of 2016), I appoint 20 December 2018 as the day on which the Regulation comes into operation.



Secretary for Transport and Housing

12 Oct 2018

Merchant Shipping (Seafarers) (Provisions and Water) Regulation (Repeal)
Regulation (Commencement) Notice

1

**Merchant Shipping (Seafarers) (Provisions and Water)
Regulation (Repeal) Regulation (Commencement)
Notice**

Under section 1 of the Merchant Shipping (Seafarers) (Provisions and Water) Regulation (Repeal) Regulation (L.N. 80 of 2016), I appoint 20 December 2018 as the day on which the Regulation comes into operation.



Secretary for Transport and Housing

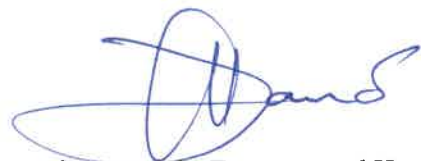
12 Oct 2018

Merchant Shipping (Seafarers) (Ships' Doctors) Regulation (Repeal) Regulation
(Commencement) Notice

1

**Merchant Shipping (Seafarers) (Ships' Doctors)
Regulation (Repeal) Regulation (Commencement)
Notice**

Under section 1 of the Merchant Shipping (Seafarers) (Ships' Doctors) Regulation (Repeal) Regulation (L.N. 81 of 2016), I appoint 20 December 2018 as the day on which the Regulation comes into operation.

A handwritten signature in blue ink, appearing to be 'D. Andrews', written in a cursive style.

Secretary for Transport and Housing

12 Oct 2018

Merchant Shipping (Seafarers) (Fees) (Amendment) Regulation 2016
(Commencement) Notice

1

**Merchant Shipping (Seafarers) (Fees) (Amendment)
Regulation 2016 (Commencement) Notice**

Under section 1 of the Merchant Shipping (Seafarers) (Fees) (Amendment) Regulation 2016 (L.N. 82 of 2016), I appoint 20 December 2018 as the day on which the Regulation comes into operation.



Secretary for Transport and Housing

12 Oct 2018

Administrative Appeals Board Ordinance (Amendment of Schedule) Order 2016
(Commencement) Notice

1

**Administrative Appeals Board Ordinance (Amendment
of Schedule) Order 2016 (Commencement) Notice**

Under section 1(3) of the Administrative Appeals Board Ordinance (Amendment of Schedule) Order 2016 (L.N. 143 of 2016), I appoint 20 December 2018 as the day on which section 3(6) of the Order comes into operation.



Secretary for Transport and Housing

12 Oct 2018

Merchant Shipping (Seafarers) (Working and Living Conditions) (Amendment)
Regulation 2018

Section 1

1

**Merchant Shipping (Seafarers) (Working and Living
Conditions) (Amendment) Regulation 2018**

(Made by the Secretary for Transport and Housing under sections 86, 96,
97, 119 and 134 of the Merchant Shipping (Seafarers) Ordinance (Cap.
478))

1. **Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation amended**
The Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (Cap. 478 sub. leg. AF) is amended as set out in sections 2 to 5.
2. **Section 2 amended (interpretation)**
 - (1) Section 2(1), definition of *commencement date*—
Repeal
“Part 3”
Substitute
“this Regulation”.
 - (2) Section 2(1)—
Repeal the definition of *compliance report*
Substitute
“*compliance report* (合規報告) means a compliance report issued—
(a) by the Authority under section 91;
(b) by the competent authority of a ML Convention country under section 115; or
(c) by a recognized organization;”.

Merchant Shipping (Seafarers) (Working and Living Conditions) (Amendment)
Regulation 2018

Section 3

2

- (3) Section 2(1), Chinese text, definition of 《船上廚師公約》—
Repeal
“發證書公約”
Substitute
“發證公約”.
3. **Section 18 amended (recruitment and placement agent in other countries)**
 - (1) Section 18(2)(d)—
Repeal subparagraph (iii)
Substitute
“(iii) the seafarer has an opportunity to examine and seek advice on the agreement before entering into it; and”.
 - (2) Section 18(2)(d)(iv)—
Repeal
“it has been signed”
Substitute
“entering into it”.
4. **Section 21 amended (Authority may permit exceptions)**
Section 21—
Repeal
“Section A-VIII/1 of the STCW Convention”
Substitute
“section A-VIII/1 of the STCW Code”.

5. **Section 62 amended (documentary evidence of financial security to be carried on ship)**

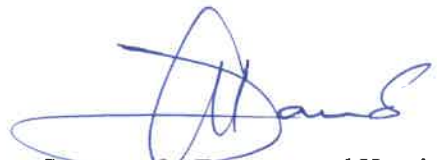
Section 62(2)(a)—

Repeal

“A2-I”

Substitute

“A4-I”.



Secretary for Transport and Housing

12 Oct 2018

Explanatory Note

This Regulation amends the Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (Cap. 478 sub. leg. AF) (*principal Regulation*) to—

- (a) amend the definition of *compliance report* in section 2(1) of the principal Regulation to tally with that of *maritime labour certificate* in that section;
- (b) provide for one additional requirement that a recruitment and placement agent of seafarers operating in a country that is not a party to the Maritime Labour Convention, 2006 has to comply with;
- (c) improve the user friendliness of the principal Regulation; and
- (d) rectify textual errors.

Merchant Shipping (Seafarers) (Official Log Books) (Amendment) Regulation 2016
(Amendment) Regulation 2018

Section 1

1

**Merchant Shipping (Seafarers) (Official Log Books)
(Amendment) Regulation 2016 (Amendment)
Regulation 2018**

(Made by the Secretary for Transport and Housing under sections 119 and 134 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

**1. Merchant Shipping (Seafarers) (Official Log Books)
(Amendment) Regulation 2016 amended**

The Merchant Shipping (Seafarers) (Official Log Books) (Amendment) Regulation 2016 (L.N. 75 of 2016) is amended as set out in sections 2 and 3.

2. Section 3 amended (section 2 amended (interpretation))

(1) Section 3—

Repeal subsection (1)

Substitute

“(1) Section 2(1)—

(a) definition of *Pilot Ladders and Hoists Regulations*;

(b) definition of *Steering Gear Regulations*—

Repeal the definitions.”.

(2) Section 3—

Repeal subsection (2)

Substitute

“(2) Section 2(1)—

Add in alphabetical order

Merchant Shipping (Seafarers) (Official Log Books) (Amendment) Regulation 2016
(Amendment) Regulation 2018

Section 3

2

“*Steering Gear Regulation* (《舵機規例》) means the Merchant Shipping (Safety) (Navigational Equipment and Safety of Navigation) Regulation (Cap. 369 sub. leg. BA);”.

3. Section 4 amended (Schedule amended (entries required to be made in official log books kept in ships))

Section 4—

Repeal subsection (9)

Substitute

“(9) The Schedule—

Repeal paragraph 21.

(9A) The Schedule, paragraph 22—

Repeal

“regulation 6 of the Steering Gear Regulations”

Substitute

“section 13 of the Steering Gear Regulation”.


Secretary for Transport and Housing

12 Oct 2018

Explanatory Note

This Regulation makes amendments to the Merchant Shipping (Seafarers) (Official Log Books) (Amendment) Regulation 2016 (L.N. 75 of 2016) which are consequential to the making of the Merchant Shipping (Safety) (Navigational Equipment and Safety of Navigation) Regulation (Cap. 369 sub. leg. BA) (*Safety Regulation*). In particular, the amendments aim to—

- (a) include the reference to the Safety Regulation in the Merchant Shipping (Seafarers) (Official Log Books) Regulation (Cap. 478 sub. leg. P); and
- (b) remove the reference to the Merchant Shipping (Safety) (Arrangements for Embarkation and Disembarkation of Pilots) Regulation (Cap. 369 sub. leg. AU), which had been repealed in view of the making of the Safety Regulation.