

立法會
Legislative Council

LC Paper No. CB(1)1229/12-13
(These minutes have been seen
by the Administration)

Ref : CB1/BC/6/12

**Bills Committee on Merchant Shipping (Seafarers)
(Amendment) Bill 2013**

**Minutes of first meeting
held on Wednesday, 15 May, 2013, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Members present : Hon WONG Kwok-kin, BBS (Chairman)
Hon Alan LEONG Kah-kit, SC
Hon Steven HO Chun-yin
Hon Frankie YICK Chi-ming
Hon SIN Chung-kai, SBS, JP
Hon POON Siu-ping, BBS, MH
Hon TANG Ka-piu

Member absent : Hon Cyd HO Sau-lan

Public officers attending : Agenda Item II
Transport and Housing Bureau
Ms Jenny CHAN
Principal Assistant Secretary (Transport) 10

Mr Jason LAM
Assistant Secretary (Transport) 10A

Marine Department

Mr Y M CHENG
Chief, Marine Accident Investigation & Shipping
Security Policy

Mr S F WONG
General Manager, Shipping Registry & Seafarers

Department of Justice

Ms Mabel CHEUNG
Senior Government Counsel

Ms Carmen CHAN
Government Counsel

Clerk in attendance : Mr Derek LO
Chief Council Secretary (1)5

Staff in attendance: Ms Clara TAM
Assistant Legal Adviser 9

Mr Noel SUNG
Senior Council Secretary (1)5

Action

I Election of Chairman

Mr WONG Kwok-kin, the member with the highest precedence in the Council among all members of the Bills Committee present, presided over the election of Chairman of the Bills Committee. He invited nominations for the chairmanship of the Bills Committee. Mr Frankie YICK nominated Mr WONG Kwok-kin and the nomination was seconded by Mr TANG Ka-piu. There being no other nomination, Mr WONG Kwok-kin was elected Chairman of the Bills Committee. Members agreed that there was no need to elect a Deputy Chairman.

2. The Chairman informed members that Mr Steven HO had submitted a late application to join the Bills Committee. Members agreed to accept Mr Steven HO as a member of the Bills Committee.

II Meeting with the Administration

(LC Paper No. CB(3)472/12-13	—The Bill
File Ref: PML CR 8/10/150/8	—The Legislative Council Brief issued by the Transport and Housing Bureau
LC Paper No. LS44/12-13	—Legal Service Division Report on the Bill
LC Paper No. CB(1)1033/12-13(01)	—Marked-up copy of the Bill prepared by the Legal Service Division
LC Paper No. CB(1)1033/12-13(02)	—Paper on Merchant Shipping (Seafarers) (Amendment) Bill 2013 prepared by the Legislative Council Secretariat (background brief))

3. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions required of the Administration

4. The Bills Committee requested the Administration to –

- (a) confirm as to:
 - (i) whether all requirements of the Maritime Labour Convention, 2006 (the Convention) had been incorporated in the Bill (if not, the Administration's plan for implementing other requirements in the Convention), and
 - (ii) whether there were any deviations from or modifications to the Convention in the proposed provisions of the Bill; and
- (b) provide the justifications and situations for adopting "the direct reference approach" in making the subsidiary legislation under the Merchant Shipping (Seafarers) Ordinance (Cap. 478), and examples of enabling provisions in other legislation allowing the use of "direct reference approach" and the relevant subsidiary legislation made under such provisions.

III Any other business

Invitation of public views

5. Members agreed to invite the public to give views on the Bill and to receive these views at the next meeting of the Bills Committee.

Date of next meeting

6. Members agreed that the next meeting should be held on 6 June 2013 at 4:30 pm.

7. There being no other business, the meeting was adjourned at 9:29 am.

Council Business Division 1
Legislative Council Secretariat
5 June 2013

**Proceedings of the first meeting of
Bills Committee on Merchant Shipping (Seafarers) (Amendment) Bill 2013
on Wednesday, 15 May 2013, at 8:30 am
in Conference Room 2B of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
000105 – 000158	Mr WONG Kwok-kin	Election of Chairman	
000159 – 000237	Chairman	Hon Steven HO's late application for membership was accepted	
000238 – 000757	Chairman Administration	The Administration briefed members on the Bill	
000758 – 001335	Chairman Mr TANG Ka-piu Administration	<p>Mr TANG Ka-piu enquired whether all the requirements of the Maritime Labour Convention, 2006 (the Convention) had been incorporated in the Bill, and whether any organizations could carry out business of recruiting and supplying seafarers for employment in ship as a result of enactment of the Bill. Mr TANG said that the relevant trade unions were disappointed that the provisions of the Convention did not cover collective bargaining and retirement protection for seafarers. Mr TANG enquired whether crew members working on vessels plying between Hong Kong and Macao were covered by the Bill, and if not, which legislation was relevant to govern the working conditions of such crew members.</p> <p>The Administration advised that all the requirements in the Convention would be included in the Bill and the relevant subsidiary legislation. All seafarers' organizations would be allowed to carry out business of recruiting and supplying seafarers for employment in ships if they met the requirements in the proposed legislation. The proposed legislative amendments were in line with international standards, which did not require legislation on the right to collective bargaining. As for retirement protection for seafarers, the arrangements would be based on the relevant legislation of the flag States. The Convention, and hence the Bill, aimed to cover vessels engaged in international voyages. There were provisions in the Merchant Shipping (Seafarers) Ordinance (Cap. 478) covering the working conditions of crew members working on passenger ships plying between Hong Kong and Macao.</p>	The Administration to take action as per paragraph 4(a)(i) above

Time marker	Speaker	Subject(s)	Action required
001336 – 001518	Chairman Mr Frankie YICK Administration	<p>In reply to Mr Frankie YICK's enquiry regarding Clause 53, the Administration clarified that the proposed amendment was to allow a seafarer to allot his wages entirely, instead of only partly under the existing provisions, to a person nominated by him.</p> <p>In response to Mr YICK's enquiry, the Administration confirmed that section 106(1)(a)(ii) in Clause 64 was a new provision to enable the Government to detain ships of the employers of seafarers if the Government had incurred expenses in repatriating the seafarers for which the employers were liable.</p>	
001519 – 001653	Chairman Mr POON Siu-ping Administration	<p>Mr POON Siu-ping enquired whether seafarers working on the cruise vessels which provided short trips outside Hong Kong would be covered by the Bill. The Administration remarked that the Bill covered all ships registered in Hong Kong and foreign ships in the Hong Kong waters engaged in international voyages. Hence the types of vessels mentioned by Mr POON were covered by the Bill.</p>	
001654 – 002548	Chairman Mr SIN Chung-kai Administration	<p>Mr SIN Chung-kai enquired whether there were any deviations from or modifications to the Convention in the proposed provisions of the Bill. In addition, Mr SIN expressed concern about the use of the "direct reference approach" to allow the subsidiary legislation of the Merchant Shipping (Seafarers) Ordinance to refer to requirements under international conventions applicable to Hong Kong. He opined that this approach might in effect amount to circumventing the scrutiny of the legislative amendments by the Legislative Council (LegCo). Mr SIN enquired whether there were any precedents in adopting the "direct reference approach" in other legislative amendments, and under what circumstances the "direct reference approach" would be adopted in subsidiary legislations.</p> <p>The Administration stated that there were precedents in using "direct reference approach". An example was the Merchant Shipping (Prevention of Pollution) Ordinance (Cap. 413). The Administration stressed that the "direct reference approach" adopted in the Bill would only be used for requirements of a technical nature, e.g. change of the standard size of the bed</p>	<p>The Administration to take action as per paragraph 4(a)(ii) and (b) above.</p>

Time marker	Speaker	Subject(s)	Action required
		<p>for seafarers. The proposed amendments to the subsidiary legislation would also clearly identify the provisions of international convention that were adopted under the "direct reference approach". Department of Justice (DoJ) supplemented that the "direct reference approach" would only be appropriate where the international requirements were clear and concrete. The approach would not be appropriate where the international requirements only set out certain principles and required individual jurisdictions to enact detailed provisions in local legislation based on the principles. The "direct reference approach" had been used in other ordinances relating to regulation of merchant ships. The Administration undertook to provide a paper detailing the information requested by Mr SIN to the Bills Committee after the meeting.</p>	
002549 – 004005	<p>Chairman Mr Alan LEONG Administration Assistant Legal Adviser (ALA)9</p>	<p>Mr Alan LEONG expressed reservation on the use of the "direct reference approach" as it might deprive LegCo's power to scrutinize the subsidiary legislations which implemented international conventions in Hong Kong.</p> <p>The Administration remarked that the proposed amendments to the subsidiary legislation would clearly identify the provisions of international convention/agreement to be adopted through the "direct reference approach".</p> <p>In response to Mr LEONG's enquiry, ALA9 remarked that the "direct reference approach" had been used in other ordinances when the international standards were spelt out in very lengthy provisions or were of a very technical nature. If subsidiary legislation with reference to international standards was proposed, Council Members might require the Administration to provide the details of the international standards for scrutiny, if necessary.</p> <p>Mr LEONG requested the Administration to provide information on the detailed arrangements of using the "direct reference approach" in subsidiary legislation.</p>	<p>The Administration to take action as per paragraph 4(b) of the minutes.</p>
004006 – 004939	<p>Chairman Mr TANG Ka-piu Administration</p>	<p>Mr TANG Ka-piu was concerned whether the crew members working on the vessels plying between Hong Kong and Macao were aware that the Convention did not apply to them, and might</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>argue for similar protection for them.</p> <p>The Administration remarked that the mode of operation of the ocean-going vessels differed from that of the vessels plying between Hong Kong and Macao. The Convention only applied to vessels engaged in international voyages taking into account that the ships would be away from the ports for a long time. The Administration added that the relevant ship owners, ship operators and seafarers had been consulted on the implementation of the Convention in Hong Kong. The operation licences for the vessels plying between Hong Kong and Macao had specified the working hours and rest time for the crew members, and the companies had to submit the duty rosters to the Marine Department on a monthly basis for checking. The Administration pointed out that only the revised definition of "seafarer" and the proposed permission for seafarers' organizations to take up recruitment and placement services for Hong Kong seafarers in the Bill would affect the crew members working on Hong Kong-Macao passenger vessels.</p>	
004940 – 005709	Chairman Mr SIN Chung-kai ALA9 Administration	<p>Mr SIN Chung-kai expressed reservation on the adoption of the "direct reference approach". He stressed the role that LegCo played in scrutinizing legislative proposals.</p> <p>ALA9 advised that the "direct reference approach" had been used in the adoption of international standards in other ordinances relating to merchant shipping matters.</p> <p>DoJ reiterated that the adoption of the "direct reference approach" would be indicated in the proposed legislation so that LegCo Members might still scrutinize the relevant provisions.</p> <p>The Administration pointed out that usually the resolutions passed by the International Labour Organization or International Maritime Organization would not normally be applied to vessels which were built before the implementation date of the resolutions.</p>	
005710 – 005754	Chairman Mr Frankie YICK	Mr Frankie YICK supported the use of the "direct reference approach" as the requirements set by the Convention were usually more stringent than the requirements in local legislation.	

Time marker	Speaker	Subject(s)	Action required
005755 – 005821	Chairman	Members' agreement to invite deputations' view	
005822 – 010004	Chairman	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
5 June 2013