

立法會
Legislative Council

LC Paper No. CB(1)1033/12-13(02)

Ref: CB1/BC/6/12

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

Background Brief

Purpose

This paper provides background information on the Merchant Shipping (Seafarers) (Amendment) Bill 2013 ("the Bill"), and a summary of members' views and concerns on related matters during discussion at the meeting of the Panel on Economic Development on 11 December 2012.

Background

2. In recognition of the global nature of the shipping industry, the United Nations' International Labour Organization (ILO), after tripartite negotiations (involving representatives from governments, employers and workers), adopted the Maritime Labour Convention (MLC) in 2006 to provide a comprehensive set of global standards for protecting seafarers' rights to decent employment. These standards cover, inter alia, manning levels for the ship, conditions of employment, hours of work and hours of rest, on-board accommodation, recreational facilities, food and catering, medical care and complaint procedures.

3. The MLC has been ratified by a sufficient number of ILO members to enable it to come into force for these member jurisdictions on 20 August 2013. As an international maritime centre with one of the largest shipping registers, it is important for Hong Kong to comply with up-to-date international standards on maritime matters, including those stipulated by the MLC. The Hong Kong Special Administrative Region (HKSAR) is not a member of the ILO and it owes its current representation on the ILO to the People's Republic of China (PRC). Declaration in respect of the application of the MLC to Hong Kong is to be made by the PRC on the HKSAR's behalf.

4. At present, working standards, health requirements and employment conditions for seafarers are specified in the Merchant Shipping (Seafarers) Ordinance (Cap. 478) (the "Ordinance") and 12 pieces of subsidiary legislation under the Ordinance. Accordingly, the Administration proposes to implement the MLC in Hong Kong through updating of the relevant provisions under the Ordinance and its subsidiary legislation, as well as enacting a new regulation to reflect the applicable international standards.

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5. The Bill seeks to amend the Ordinance to –
- (a) implement certain requirements of the MLC, 2006;
 - (b) make technical amendments to improve the operation and presentation of the Ordinance; and
 - (c) provide for related and consequential matters.

Provisions of the Bill

Amendments to implement the Convention

6. To align with the definition of "seafarer" of the MLC, the Bill proposes to amend the existing definition of "seafarer" to include persons who work on ships in any capacity (such as masters, officers and medical practitioners) but exclude certain persons listed in a new Schedule A (such as pilots, shipowners and their representatives and officers of law enforcement). Consequentially, the existing term "registered seafarer" is proposed to be replaced by "registered person".

7. The Bill also proposes to allow seafarers' organizations, in addition to companies, to carry out business of recruiting and supplying seafarers for employment in ship and to add a new definition of "permitted body" to include both the companies and seafarers' organizations.

8. To enable the alignment of the subsidiary legislation made under the Ordinance and the MLC's requirements, the Bill proposes to amend certain empowering provisions so that the Secretary for Transport and Housing may –

- (a) make regulations to allow seafarers to allot all of their wages to the persons nominated by them (clause 53);

- (b) adopt the "direct reference approach" in making regulations in future for implementing requirements under international agreements applicable to Hong Kong (clause 66); and
- (c) set out in the regulations circumstances under which seafarers are entitled to be repatriated by their employers, the manner of repatriation as well as the relief and maintenance to be provided before the repatriation (clauses 62 and 63).

Miscellaneous, technical and related consequential amendments

9. The Bill makes miscellaneous amendments to the Ordinance such as to remove the existing restriction that persons aged 35 years or above cannot be registered with the Marine Department for employment as seafarer; to remove the existing provisions which allow a permitted company to recover from seafarers not more than half of the prescribed fee paid to the Government in respect of the employment of seafarers; and require seafarers on Hong Kong registered ships to enter into written employment agreements (known as "crew agreement") with the shipowners or authorized persons, etc. The Bill also proposes to make certain technical and related consequential amendments to the Ordinance.

Commencement

10. The Bill, if enacted, will come into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette. According to the Administration, the Bill will only commence operation after the PRC has ratified the MLC and extended its application to Hong Kong.

Views and concerns expressed by members of the Panel on Economic Development

11. The Panel on Economic Development was consulted on the policy aspects of the Bill on 11 December 2012. While supporting in general the legislative proposals, members expressed the following views and concerns –

- (a) some members expressed concern that the legislative proposals did not cover the seafarers' right to collective bargaining and retirement protection. The Administration explained that the proposal was in line with international standards, which did not require legislation on the right to collective bargaining and that seafarers' retirement protection would be based on the relevant legislation of the state where the ships were registered;

- (b) there was concern that the Bill might not be implemented in time before the MLC took effect. The Administration explained that under such circumstance, 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;
- (c) a member was of the view that the procedures of inspection for the renewal of the Maritime Labour Certificate should be streamlined in order to facilitate operation of the ships; and
- (d) a member expressed concern about the role of the Government if seafarers' complaints could not be resolved on board a ship which was in Hong Kong waters, especially when the ship had to leave Hong Kong shortly. The Administration advised that the Marine Department would deal with the complaints which could not be resolved on board of ships in Hong Kong.

References

12. The relevant papers are available at the following links:

Legislative Council Brief dated 3 April 2013 (PML CR 9/10/150/8)

http://www.legco.gov.hk/yr12-13/english/bills/brief/b12_brf.pdf

Report of Legal Service Division, Legislative Council Secretariat LS/B/13/2-13

<http://www.legco.gov.hk/yr12-13/english/hc/papers/hc0426ls-44-e.pdf>

Minutes of Panel on Economic Development meeting on 11 December 2012
(LC Paper CB(1)540/12-13)

<http://www.legco.gov.hk/yr12-13/english/panels/edev/minutes/edev20121211.pdf>

Council Business Division 1
Legislative Council Secretariat
14 May 2013