



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

來函檔號 YOUR REF : PML CR 8/10/150/8  
本函檔號 OUR REF : LS/B/13/12-13  
電 話 TELEPHONE : 3919 3512

傳真 FACSIMILE : 2877 5029  
電郵 E-MAIL : ctam@legco.gov.hk

By Fax (2523 0030)

6 June 2013

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

Dear Ms CHAN,

**Re: Merchant Shipping (Seafarers) (Amendment) Bill 2013**

I am scrutinizing the above Bill and would be grateful for your response on the following matters -

- (a) Proposed definition of "seafarer"
- (i) The Bill seeks to implement certain requirements of the Maritime Labour Convention, 2006 (the Convention). The Bill proposes to define "seafarer" as "a person who works on board a ship in any capacity except certain categories of persons specified in the proposed new Schedule 1A" (Clause 4). Despite the exceptions (e.g. pilot, shipowners and its representatives, etc.) provided in new Schedule 1A, the proposed definition may include persons whose works are performed on board a ship but do not in any way relate to the normal operation of the ship, e.g. a carer employed by a passenger and a tourist guide employed by a tourist group etc. Please clarify the legislative intent.

- (ii) Under paragraph 1(f) of the proposed Schedule 1A, "a person who works on board the ship only within a port or at a port facility" is excluded from the definition of "seafarer" (Clause 67). It is noted that under the respective section 2 of the Shipping and Port Control Ordinance (Cap. 313) and the Merchant Shipping (Local Vessels) Ordinance (Cap. 548), "port" and "port facility" are defined. Please explain the meaning of "port" and "port facility" under the proposed new Schedule and consider the need for defining "port" and "port facility" under the Schedule.

(b) Direct Reference Approach

- (i) The proposed new section 134(3A) allows the regulations made under the Merchant Shipping (Seafarers) Ordinance (Cap. 478) (the Principal Ordinance) to refer directly to "a provision of an international agreement that is applicable to Hong Kong and amended from time to time" (Clause 66). Unlike some other enabling provisions adopting this approach (e.g. section 112B of the Merchant Shipping (Safety) Ordinance (Cap. 369) and section 3A of the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413)), there is no mention of the relevant international agreement nor any provision specifying the matters to which the international agreement relates in the proposed section 134(3A). Please explain the reasons for not following the drafting approach taken in Cap. 369 and Cap. 413.
- (ii) It is also noted in some implementing legislation giving effect to international agreement, the relevant international agreement is defined to mean the agreement "as amended from time to time and as applicable to Hong Kong" to include future amendments to the international agreement (e.g. section 2(1) of the Freight Containers (Safety) Ordinance (Cap. 506)). The present drafting of "applicable to Hong Kong and amended from time to time" under the proposed section 134(3A) may lead to an uncertainty as to whether the relevant international agreement is still applicable to Hong Kong after being amended from time to time. Please explain the reasons for not adopting the formulation used in the existing legislation.

(iii) Existing section 96 of the principal Ordinance also empowers the making of subsidiary legislation for giving effect to any provision of any international agreement applicable to Hong Kong so far as the agreement relates to the health, safety or welfare of seafarers (subsection (1)(b)). With the enactment of the new proposed section 134(3A), it appears that the subsidiary legislation made under section 96 will also be empowered to directly refer to a provision of an international agreement. Please confirm this is the legislative intention.

(c) Repeal of offence provisions

Clauses 57 and 60 proposes to repeal the respective offence provision under sections 97(6) and 100(2) of the principal Ordinance. According to the paragraph 22 of the Explanatory Memorandum to the Bill, the offence provisions will be separately provided in the subsidiary legislation governing crew accommodation and medical stores in Hong Kong ships. It is noted that without a specific enabling provision under sections 97 and 100, the subsidiary legislation may only stipulate that a contravention or breach of subsidiary legislation is an offence punishable on summary conviction by such fine not exceeding \$5,000 or by such term of imprisonment not exceeding 6 months by virtue of section 28(1)(e) of the Interpretation and General Clauses Ordinance (Cap. 1). Such fine is lower than the fine of \$10,000 and \$25,000 respectively under the existing sections 97(6) and 100(2). Please explain the reasons for the reduced level of fine under the relevant sections.

(d) Technical amendments to improve operation and presentation of the Ordinance

It is noted that, apart from change of the style or presentation, the Bill also proposes certain amendments to the following sections of the principal Ordinance -

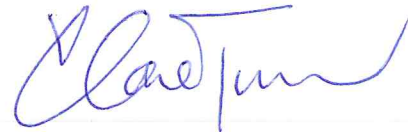
	<i>Section in Cap. 478</i>	<i>Clause in the Bill</i>	<i>Proposed Amendments in the Bill</i>
(i)	12	11	Reference to section 15 is substituted by section 15(3).
(ii)	27(2)	20(4)	Reference to section 24(1) is repealed.

	<i>Section in Cap. 478</i>	<i>Clause in the Bill</i>	<i>Proposed Amendments in the Bill</i>
(iii)	60	40	Reference to section 55 is repealed and reference to section 56(6) is substituted by section 56(1).

Please explain the reasons for the above proposed amendments and the change in the legal effect of the relevant sections, if any.

I would be grateful if you could let me have your reply in bilingual form on or before 14 June 2013.

Yours sincerely,



(Clara TAM)  
Assistant Legal Adviser

cc. DoJ (Attn.: Ms Mabel CHEUNG, SGC & Ms Carmen CHAN, GC (By  
Fax: 2845 2215)  
Clerk to Bills Committee  
LA  
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