

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

**The Administration's response to and supplementary information on
the views raised by the Hon. TANG Ka-piu in the letter dated 5 June 2013
and by deputations at the meeting on 17 June 2013**

(I) Views raised by the Hon. TANG Ka-piu

In response to the views raised by the Hon. TANG on the Merchant Shipping (Seafarers) (Amendment) Bill 2013 (the Bill) in the letter dated 5 June 2013 addressed to the Hon. WONG Kwok-kin, Chairman of the Bills Committee on the Bill, our reply to various parts of the letter is as follows:

(1) *On-board medical care*

2. Standard A4.1.4(b) and (c) of the Maritime Labour Convention, 2006 (MLC) stipulate the minimum requirements of medical care on board as follows:

- (b) *ships carrying 100 or more persons and ordinarily engaged on international voyages of more than three days' duration shall carry a qualified medical doctor who is responsible for providing medical care.*
- (c) *ships which do not carry a medical doctor shall be required to have either at least one seafarer on board who is in charge of medical care and administering medicine as part of their regular duties or at least one seafarer on board competent to provide medical first aid; persons in charge of medical care on board who are not medical doctors shall have satisfactorily completed training in medical care that meets the requirements of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW); seafarers designated to provide medical first aid shall have satisfactorily completed training in medical first aid that meets the requirement of STCW.*

3. Regarding "carrying 100 or more persons" under Standard A4.1.4(b), the persons involved include all persons on board. As a matter of fact, Section 2 of existing Merchant Shipping (Seafarers) (Ships' Doctors) Regulation (Cap 478H) has already required that every Hong Kong ship which is engaged on international voyages and is carrying 100 or more persons shall carry a medical practitioner. However, the number of days on voyage is not specified.

4. Nevertheless, given today's sophisticated communication technology and adequate medical support, the International Labour Organisation and industry practitioners have accepted the requirement that "ships ... engaged on international voyages of more than three days' duration shall carry a qualified medical doctor". Therefore, upon passage of the Bill and in pursuance of the MLC, we plan to incorporate this requirement into the new regulation (the new Regulation) to be enacted under the Merchant Shipping (Seafarers) Ordinance (Cap 478) (the Ordinance). The existing requirement under Cap 478H will be repealed.

(2) Medical Certification

5. Existing requirements for medical examination and medical certification are set out in the Merchant Shipping (Seafarers) (Medical Examination) Regulation (Cap 478O). In pursuance of the MLC, we will amend the requirements for medical examination and medical certification under the Regulation by making reference to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978. These requirements are comparable with the existing ones and can help ensure that seafarers are physically fit for working on board.

(3) Hours of work and rest

6. According to the hours of work and rest requirements under Standard A2.3 of the MLC, the normal working hours' standard for seafarers shall be based on an eight-hour day with one day of rest per week and rest on public holidays.

7. We plan to legislate on the "minimum hours of rest", taking into account the operational arrangement on board and the relatively irregular working hours often requiring overtime for loading and unloading cargos upon arrival in ports, and after consulting the tripartite working group comprising representatives of the employees, of the employers and of the Government and the Seafarers' Advisory Board. The standards are as follows-

- (i) it shall not be less than ten hours in any 24-hour period; and
- (ii) it shall not be less than 77 hours in any seven-day period. The hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the interval between consecutive periods of rest shall not exceed 14 hours.

Based on the above requirements, any working hour(s) exceeding eight hours will be deemed as "overtime". Both the employees and the employers have

agreed to the above standards.

(4) Qualifications of Seafarers

8. As the HKSAR Government encourages labourers and professionals to join the marine industry, the maximum age restriction on registration as seafarers will be removed through the Bill.

9. The proposal of allowing non-permanent residents with less than seven years' residence in Hong Kong to register as seafarers does not involve the requirements under the MLC. However, immigration and relevant policies as well as legislations must be taken into account, and the industry and relevant bureaux and departments must be consulted before any decision can be made. The Administration will follow up on this matter.

10. As for the persons who committed certain types of criminal offences, if the offences they committed are not referred to in sections 21, 28 and 29 of the Ordinance, they are still eligible for registration as seafarers. In addition, after consulting the Seafarers' Advisory Board, the Director of Marine may also decide whether to approve applicants who committed the offences referred to in sections 21, 28 and 29 of the Ordinance for registration as seafarers.

(5) Seafarers' employment agreements

11. Under section 91 of the existing Ordinance, if a seafarer's employment agreement is terminated prematurely under various circumstances, which include wreckage of a ship or any reason other than a seafarer's disciplinary problem, and the employer is unable to arrange another position with wage level and rank that are not lower than the existing ones, then the seafarer is entitled to an unemployment indemnity equivalent to a maximum of two months' wages.

12. Under the existing Ordinance, there is no requirement for a minimum notice period for termination of a crew agreement. After consulting the tripartite working group comprising representatives of the employees, of the employers and of the Government and the Seafarers' Advisory Board, in pursuance of the MLC, we will require under the new subsidiary legislation a notice period of not less than seven days for termination of employment agreement by either side. This requirement will not affect the existing provisions on unemployment indemnity.

(6) On-board complaint procedures

13. Under the MLC, seafarers shall have a right to complain to the master or directly to the competent authority (viz. the Marine Department (MD) in the

case of Hong Kong). After receiving the complaint, the MD will investigate whether the complaint involves any illegal practice, and will take enforcement actions under relevant legislation subject to the investigation result. If the complaint involves no illegal practice, the MD, after understanding the case, will facilitate communication between the shipowner and seafarers in solving the problem. As the MD has all along provided all Hong Kong-registered ships with on-board complaint procedures, and the Administration will also incorporate requirements on on-board complaint procedures under the MLC into the new Regulation, there is no need for a separate subsidiary legislation on relevant requirements.

(7) Vessels plying between Hong Kong and Macau and river trade vessels

14. As vessels engaged in international voyages normally sail for many days continuously, and seafarers must live on board during such voyages, the working and living conditions of seafarers on board vessels engaged in international voyages are very different from those on board cross-boundary passenger ships and local vessels. Furthermore, there are also significant differences among different types of vessels in terms of the size, facilities and operational arrangements. Therefore, the MLC only sets out the relevant requirements targeting the special circumstance of vessels engaged in international voyages.

15. Besides, when drafting local legislation proposals for the implementation of the MLC, the tripartite working group comprising representatives of the Government, of seafarers and of shipowners reached a consensus on the scope of its application. It was recognised that requirements under the MLC are not applicable to ships other than those engaged in international voyages. The representatives of seafarers and of shipowners also included representatives of cross-boundary passenger ships.

16. As a matter of fact, existing legislations have already set out requirements for the working conditions of seafarers on cross-boundary passenger ships as well as local vessels. Relevant requirements are also included in the permits to operate cross-boundary passenger ships. These ensure reasonable working arrangements for seafarers.

(8) Entertainment Cruise

17. We believe that the large entertainment cruises mentioned in the Hon. Tang's letter are not Hong Kong-registered ships. Under the MLC, any person who is employed or engaged or works in any capacity on board a ship will be considered seafarers. As the above entertainment cruises are engaged in international voyages, seafarers working on board such ships shall meet the

definition of “seafarer” under the MLC. The MD will inspect these ships in accordance with the MLC when the new legislation comes into force.

(II) Views raised by deputations

18. Regarding the views on various issues raised by deputations at the Bills Committee meeting on 17 June 2013, our reply to the various issues is as follows:

(1) Request for legislation on the right to collective bargaining

19. Article III of the MLC only requires each Member to respect the right to collective bargaining but does not require legislation on this right. The Government has all along respected the right to collective bargaining and has spared no effort to promote the mechanism of voluntary negotiations between employers or employers’ associations and employees unions. The MD also accepts crew agreements drawn up through collective bargaining. As the proposal is not a requirement for implementation through legislation under the MLC, and there is no clear consensus in society, we consider it inappropriate to incorporate the right to collective bargaining into the Bill.

(2) Request for introduction of minimum wage for seafarers (including cadets)

20. At present, the wage levels of Hong Kong seafarers (including cadets) are determined with reference to the pay scale drawn up regularly by both employees and employers through collective bargaining. The Government also provides a subsidy of HK\$5,000 for cadets to encourage more people to join the maritime industry.

21. As the aim of the Bill is to implement the MLC, and the establishment of a procedure for determining the seafarers’ minimum wage levels is not required for implementation through legislation under the MLC, the Administration will not consider the incorporation of relevant requirements into the Bill. If representatives of the industry need to study the related matters, they may discuss the matters using other existing platforms, such as the Seafarers’ Advisory Board.

(3) Protection for seafarers who fall sick

22. Under the requirement of Standard A4.2.3 of the MLC, the shipowner shall be liable to pay full wages as long as the sick seafarers remain on board or until the seafarers have been repatriated in accordance with the MLC. In addition, the shipowner shall be liable to pay 80% of the full wages (for not less

than 16 weeks from the day of the commencement of the sickness) after the seafarers' repatriation until their recovery.

(4) Protection for seafarers who die of illness on board or while on duty

23. Under the requirement of Standard A4.2.1(b) of MLC, shipowners shall provide financial security to assure compensation as set out in the seafarers' employment agreements in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard.

24. In addition, shipowners shall be liable to pay the cost of burial expenses in the case of death occurring on board or ashore during the period of employment. Shipowners shall also take measures for safeguarding property left on board by sick, injured or deceased seafarers and for returning it to their next of kin.

(5) Clarification about the notice period for termination of crew agreements

25. This issue was covered under Item 5 in the Hon Tang Ka-piu's letter, and our response to it was set out above.

(6) Allowing non-permanent residents to register as seafarers

26. This issue was covered under Item 4 in the Hon Tang Ka-piu's letter, and our response to it was set out above.

(7) Increasing the frequency of meetings of the Seafarers' Advisory Board

27. Since the frequency of meetings of the Seafarers' Advisory Board concerns administrative arrangements, it may not be appropriate to specify the frequency by legislation. If members wish to discuss seafarer-related issues, the MD would stand ready to convene meetings.

**Transport and Housing Bureau
Marine Department
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