

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

**Supplementary information requested by Members
at the meeting on 2 July 2013**

(I) Revision to the definition of “seafarer”

In view of Members’ request to amend the definition of “seafarer” in order to specify more clearly the types of persons working on board a ship who will be covered by the Merchant Shipping (Seafarers) (Amendment) Bill 2013 (the Bill), we have reviewed the definition and propose to revise it by adding the underlined words as set out below –

“seafarer” (海員) means a person who works on board a ship in any capacity on the business of the ship, but does not include a person specified in Schedule 1A.

2. The addition of the wording “on the business of the ship” will make it clear that the definition includes not only seamen, but also people employed to provide different kinds of services for passengers on a cruise liner (e.g. entertainers, casino worker, etc.). On the other hand, it will not catch a person whose work does not relate to the ship (e.g. a carer or any other person employed by a passenger and brought on board, or a tour guide employed by a travel agency to take care of a tourist group travelling on the ship). Regarding the definition of “passenger”, we propose to amend subsection (a) as follows to tally with the wording used in the definition of “seafarer” –

“passenger” (乘客) means any person carried in a ship except -

- (a) a person ~~employed or engaged~~ who works on board the ship in any capacity on the business of the ship;*
- (b) a person on board the ship pursuant to the obligation laid upon the master of the ship to carry shipwrecked, distressed or other persons, or by reason of any circumstances that neither the master nor the owner of the ship could have prevented or forestalled; or*
- (c) a child under 1 year of age.*

3. For information, all ships registered on the Hong Kong Shipping Register are cargo ships, with the exception of one passenger ship which does

not provide entertainment on board. There is currently no cruise ship registered on the Hong Kong Shipping Register. However, if one is registered, the definition will also cover persons such as an entertainer, performer, staff of restaurants, and all those providing services of the ship to passengers.

(II) Replacement of the word “shall” with “must”

4. Following the plain language policy of the Law Drafting Division of the Department of Justice, “must” is used in place of “shall” to impose statutory obligations and prohibitions in new provisions and amendments to existing provisions to be added or made to the Merchant Shipping (Seafarers) Ordinance (Cap. 478) (the Ordinance). Their co-existence in the same piece of legislation to impose obligations and prohibitions will not lead to problems in interpretation.

5. The Government appreciates the desirability of achieving consistency in the language presentation of the Ordinance by replacing “shall” with “must” in all provisions where the context is appropriate, and intends to do so in due course by way of a revision order under section 17 of the Legislation Publication Ordinance (Cap. 614), which is designed to deal with technical matters relating to legislation, including securing uniformity in expressions within and between Ordinances. This will be pursued as an exercise separate from the present Bill.

(III) Policy and practice on implementation of international conventions/agreements

6. According to the Department of Justice, three major approaches have been adopted in local legislation for implementing international agreements¹ which apply to Hong Kong. The approaches are explained in the ensuing paragraphs.

(a) Incorporating agreement texts into the implementing legislation with supplementary legislative provisions

7. Under this approach, the text of an international agreement is incorporated into the implementing legislation by reproducing it in the

¹ Including international agreements entered into between Hong Kong and other jurisdictions, as well as international agreements entered into by the Central People’s Government and applied to Hong Kong.

legislation, usually in a Schedule. In many cases, additional provisions are added in the legislation to supplement the incorporated agreement text. For example, the Government may wish to achieve certain policy goals with respect to the subject matter dealt with by an international agreement but which are not addressed by the provisions of the agreement. Examples of this approach include the Child Abduction and Custody Ordinance (Cap. 512) and the Consular Relations Ordinance (Cap. 557).

(b) Transforming the texts of international agreements

8. There are cases where an international agreement simply requires parties to achieve certain results (e.g. to prohibit certain activities or to promote certain principles) without prescribing the implementation details. The parties are left to design their own regulatory framework to implement the agreement.

9. In some cases, the wording and terminology of an agreement may not conform to the normal usage in the local context. Legislative re-writing will be needed in order to clarify the meaning and to avoid misinterpretation.

10. This approach is also common where the existing legislation is largely consistent with the provisions of an international agreement, and can be adapted to fully implement the international agreement.

11. An example of this approach may be found in the Smoking (Public Health) Ordinance (Cap. 371) which, inter alia, implements the World Health Organization Framework Convention on Tobacco Control 2003.

(c) Referring to the requirements under an international agreement in the implementing legislation

12. The implementing legislation may make reference to the requirements under an international agreement without setting out the text. This approach has been used where the relevant agreement provisions are technical and detailed. An example of this approach is the Merchant Shipping (Safety) (Life-Saving Appliances) Regulation (Cap. 369AY).

The use of different approaches

13. As seen from the above, different approaches have been adopted to implement international agreements in local legislation to suit different types of

international agreements and different policy needs. The precise approach to be adopted to implement an international agreement will be decided on a case by case basis having regard to the nature and substance of the international agreement in question, and the policy objectives to be achieved. In practice, different approaches may also be used within a single piece of implementing legislation to implement different provisions of an international agreement.

14. The current exercise adopts the second approach. The Ordinance and its subsidiary legislation already set out the standards on some of the subject matters covered by the Maritime Labour Convention, 2006 (MLC). The relevant provisions will be updated to reflect the requirements of MLC. For example, standard A2.2.3 of MLC requires members to require “shipowners to provide seafarers with a means to transmit all or part of their earnings to families or dependants ... ”. Section 89 of the Ordinance already allows seafarers to allot part of their wages by allotment notes. The section will thus be amended to also allow seafarers to allot all of their wages. New subsidiary legislation and provisions will also be added to implement requirements on the subject matters which are not covered in current legislation.

Transport and Housing Bureau
Department of Justice
Marine Department
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