

立法會
Legislative Council

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**Paper for the House Committee Meeting
on 26 April 2013**

**Legal Service Division Report on
Merchant Shipping (Seafarers) (Amendment) Bill 2013**

I. SUMMARY

- 1. The Bill** The Bill proposes to amend the Merchant Shipping (Seafarers) Ordinance (Cap. 478) to -

 - (a) implement certain requirements of the Maritime Labour Convention, 2006 (the Convention);
 - (b) make technical amendments to improve the operation and presentation of the Ordinance; and
 - (c) provide for related and consequential matters.

- 2. Public Consultation** The Administration consulted shipowners' and seafarers' organizations as well as various advisory committees on the legislative proposal. All of them raised no objection to the proposal.

- 3. Consultation with LegCo Panel** The Panel on Economic Development was consulted on the legislative proposal on 11 December 2012. Members generally supported the legislative proposal. Some members raised concerns in relation to the details and implementation of the proposal.

- 4. Conclusion** In view of the significance of the Bill in implementing the Convention which will necessitate amendments to the existing subsidiary legislation and the enactment of new subsidiary legislation, Members may wish to set up a Bills Committee to study the Bill in detail.

II. REPORT

The date of First Reading of the Bill is 24 April 2013. Members may refer to the LegCo Brief (File Ref.: PML CR 8/10/150/8) issued by Transport and Housing Bureau dated 3 April 2013 for further details.

Object of the Bill

2. To amend the Merchant Shipping (Seafarers) Ordinance (Cap. 478) (Ordinance) to -
 - (a) implement certain requirements of the Maritime Labour Convention, 2006 (the Convention);
 - (b) make technical amendments to improve the operation and presentation of the Ordinance; and
 - (c) provide for related and consequential matters.

Background

3. The Convention was adopted by the International Labour Conference of the United Nations' International Labour Organization (ILO) in 2006. The Convention sets out a comprehensive set of global standards for the working and living conditions of seafarers on board ocean-going ships to promote decent conditions of work. These standards cover, inter alia, conditions of employment, hours of work and hours of rest, on-board accommodation, recreational facilities, food and catering and medical care.

4. The Convention 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. Hong Kong Special Administrative Region (HKSAR) is not a member of ILO. The People's Republic of China (PRC) is a member state of ILO but has not ratified the Convention. Declaration in respect of the application of the Convention to Hong Kong is to be made by PRC on HKSAR's behalf. 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.

5. Currently, the Ordinance sets out the legal framework for regulating the working standards, health requirements and employment conditions for

seafarers¹ and detailed requirements are provided in its subsidiary legislation. Accordingly, the Administration proposes to implement the Convention 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.

Provisions of the Bill

Amendments to implement the Convention

6. To align with the definition of "seafarer" of the Convention, 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) (clauses 4 and 67). Consequentially, the existing term "registered seafarer" is proposed to be replaced by "registered person"².

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 (clause 33) and to add a new definition of "permitted body" to include both the companies and seafarers' organizations (clause 3).

8. To enable the alignment of the subsidiary legislation made under the Ordinance and the Convention'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).

¹ Seafarers are excluded from the application of the Employment Ordinance (Cap. 57).

² Under the existing Ordinance, the term "registered seafarer" includes a person who is only desirous of being employed as seafarer. Due to the proposed new definition of "seafarer", these persons can no longer be regarded as "seafarer".

9. The Bill also makes miscellaneous amendments to the Ordinance to -
- (a) remove the existing restriction that persons aged 35 years or above cannot be registered with the Marine Department for employment as seafarer (clause 8);
 - (b) 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 consequently a permitted body must itself be responsible for paying in full such fee (clauses 29, 30 and 31);
 - (c) require seafarers on Hong Kong registered ships to enter into written employment agreements (known as "crew agreement") with the shipowners or persons who have assumed responsibility for operating the ships from the owners, i.e. managers and charterers³ and repeal the existing provisions relating to employment agreements based on individual voyages made by a ship, which are no longer adopted in practice (clause 49);
 - (d) allow the seafarers to lodge complaints about their employment directly to the Superintendent of the Mercantile Marine Office without first complaining to the masters of ships (clauses 58 and 59); and
 - (e) allow the Government to detain ships of the employers until the expenses incurred in repatriating seafarers for which the seafarers' employers are liable have been repaid (clause 64).

Technical amendments to improve the operation and presentation of the Ordinance

10. These technical amendments can be broadly divided into the following categories -
- (a) removal of archaic terminology such as "forthwith", "thereupon", "therein", "thereat", "thereby" (e.g. clauses 18(2), 28(16), 29(5), 30(8) and 34(1));
 - (b) use of "must" to replace "shall" (e.g. clauses 42(3) and 46(1), (10), (11) and (12));

³ Under the existing section 80 of the Ordinance, it is only required that the crew agreement be entered between the seafarer and the employer which may or may not be the shipowner.

- (c) use of gender neutral expressions (e.g. clause 62(7), (8) and (9)); and
- (d) redrafting of certain sections in plain language and modern legislation format (e.g. clauses 20, 26, 27, 34, and 40).

Related, consequential and other minor amendments

11. Part 3 of the Bill proposes to make consequential and related amendments to the 8 items of subsidiary legislation under the Ordinance and to the Schedules 1 and 2 to the Administrative Appeals Board Ordinance (Cap. 442).

12. Schedules 1 and 2 to Part 3 also sets out the consequential amendments in relation to the replacement of existing references "permitted company" by "permitted body" and "registered seafarer" by "registered person" in the Ordinance.

Commencement

13. 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.

14. According to the Administration, the operation of the Bill will only commence operation after PRC has ratified the Convention and extended its application to Hong Kong (paragraph 13 of the LegCo Brief).

Public Consultation

15. According to the Administration, shipowners' and seafarers' organizations as well as advisory committees including Seafarers Advisory Board, the Shipping Consultative Committee and the Committee on the Implementation of International Labour Standards under the Labour Advisory Board were consulted on the proposed amendments. All of them have no objection to the proposal.

Consultation with LegCo Panel

16. The Panel on Economic Development was consulted on the policy aspects of the Bill on 11 December 2012. Members in general supported the legislative proposal. During deliberation, some members expressed concern about the absence of seafarers' right to collective bargaining and retirement protection in the proposal. 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 ships' flag state. A member opined that the procedures of inspection for the renewal of the Maritime Labour Certificate should be streamlined. There was also concern that the proposal might not be implemented in time before the Convention 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.

Conclusion

17. The Bill is the first step to align local legislation with the Convention. In view of its significance in implementing the Convention which will necessitate amendments to other related subsidiary legislation and the enactment of new subsidiary legislation, Members may wish to set up a Bills Committee to study the Bill in detail.

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