

For discussion on
11 December 2012

Legislative Council Panel on Economic Development
Implementation of the
Maritime Labour Convention, 2006 in Hong Kong

Purpose

We propose to amend the Merchant Shipping (Seafarers) Ordinance (Cap. 478) (the Ordinance) and its subsidiary legislations, and to make a new subsidiary legislation under the Ordinance for implementing the requirements under the Maritime Labour Convention, 2006 (MLC). This paper seeks Members' views on the relevant legislative proposals.

Background

2. At the International Labour Conference held in February 2006, MLC was adopted by over 100 International Labour Organisation (ILO) members¹, and representatives of relevant shipowners' and seafarers' organisations present at the Conference. Apart from consolidating and updating the existing ILO requirements for the employment of seafarers, more comprehensive minimum standards for the working conditions of seafarers have been set to secure the right of all seafarers to decent employment. These minimum standards cover, inter alia, conditions of employment, hours of work and hours of rest, on-board accommodation, recreational facilities, food and catering, medical care, etc.

3. MLC requires contracting states to enhance the enforcement mechanism at all levels so as to fully implement the requirements under MLC through legislation and other measures. These requirements include establishing seafarer complaints procedures, requiring shipowners and masters to monitor the conditions of their ships, requiring a flag State to exercise its jurisdiction and control over its fleet, and stipulating that a Port State may inspect foreign ships. MLC allows contracting states to enforce the requirements under MLC in such manner that best meets the requirements through local laws and practices so as to ensure compliance with MLC by shipowners and ship managers.

4. As at the end of November 2012, over 2 180 ships of total gross tonnage of 78.5 million are in the Hong Kong Shipping Registry, ranking fourth globally. Hong Kong is also one of the most reputable ship flag administrations in the

¹ China included.

world. We have been making continuous efforts to implement the standards and requirements set by international organisations regarding marine and other related matters so as to maintain Hong Kong's status as an international maritime centre. We also aim to minimize the chance that ships registered in Hong Kong are detained by overseas port authorities for non-compliance of the relevant international standards.

5. MLC will come into force with effect from 20 August next year. By then, the contracting states may inspect ships entering their waters as required under MLC. China is a member of the ILO. We understand that the Central People's Government (CPG) is making arrangements to implement MLC. Since the HKSAR is not a member of the ILO, we will notify the ILO through the CPG to extend the application of MLC to Hong Kong upon enactment of the relevant legislation.

Legislative Proposals

(a) Merchant Shipping (Seafarers) (Maritime Labour Convention) Regulation

6. The Marine Department (MD) currently regulates the working and living conditions of seafarers on board ocean-going ships through the Ordinance. To comply with the latest requirements under MLC, we propose to update the existing provisions by amending the Ordinance and its subsidiary legislations, as well as enacting a new piece of subsidiary legislation under the Ordinance, tentatively named the Merchant Shipping (Seafarers) (Maritime Labour Convention) Regulation (the new Regulation). In line with the requirements under MLC, the new Regulation will establish a certification, inspection and enforcement mechanism to ensure that ships registered in Hong Kong and foreign ships entering Hong Kong waters comply with the standards of MLC.

7. Under the new Regulation, other than the five specified types of ship², all ships registered in Hong Kong of 500 gross tonnage or over and engaged in international voyages are required to maintain a declaration of maritime labour compliance and a maritime labour certificate issued by the MD certifying that the working and living conditions of seafarers on the ship comply with the MLC requirements in the following 14 areas (major requirements are summarised at **Annex**):

² These five types of ship are:

- (i) ships engaged in fishing or similar pursuits;
- (ii) ships of traditional build, including wooden ships, such as dhows and junks;
- (iii) ships owned or operated by the Government or a State and engaged only on governmental non-commercial services;
- (iv) warships or naval auxiliaries; and
- (v) pleasure vessels not engaged in trade.

- (i) Minimum age
- (ii) Medical certification
- (iii) Qualifications of seafarers
- (iv) Seafarers' employment agreements
- (v) Private recruitment and placement services
- (vi) Hours of work or rest
- (vii) Manning levels for the ship
- (viii) Accommodation
- (ix) On-board recreational facilities
- (x) Food and catering
- (xi) Health and safety and accident prevention
- (xii) On-board medical care
- (xiii) On-board complaint procedures
- (xiv) Payment of wages

Declaration of Maritime Labour Compliance and Maritime Labour Certificate

8. Under the new Regulation (which is in accordance with MLC), a Declaration of Maritime Labour Compliance (Declaration) consists of two parts. Part 1, drawn up by the MD, sets out the provisions of local legislations made according to the requirements in the 14 areas in implementing MLC in Hong Kong. Part 2, drawn up by the shipowner, should set out the measures adopted and to be implemented by the shipowner to ensure the ship's ongoing compliance with the statutory requirements set out in Part 1. The MD will assign an authorized officer to inspect the ship, with a view to checking whether the measures set out in Part 2 can ensure the ship's ongoing compliance with the requirements in Part 1. On ascertaining the ship's ongoing compliance with the requirements and standards in Part 1, the authorized officer will certify and issue a Declaration.

9. The shipowner is eligible to apply to the MD for a Maritime Labour Certificate (Certificate) only after his ship is issued with a Declaration. The validity of the Certificate is five years commencing on the date of ship inspection. However, between the second and third anniversary dates before the expiry date of the Certificate, the shipowner is required to apply to the MD for an intermediate inspection, the scope of which is the same as that for certificate issuance. Following satisfactory inspection, the ship's Certificate will be endorsed. Upon the expiry of the Certificate, the shipowner is required to apply to the MD for a ship inspection in order to obtain a new Certificate. The shipowner is required to bear the costs for the inspections as mentioned in paragraph 8 and this paragraph.

Enforcement and Complaint Handling

10. On enforcement, the MD may board and inspect any ship registered in

Hong Kong and engaged in international voyages to ensure its compliance with the new Regulation. The MD may also conduct an investigation in response to any complaint against the ship. If any ship is found to be non-compliant with the new Regulation, the MD will issue a notice to the master requiring remedial measures for rectification within a reasonable time. If the conditions of the ship are in serious breach of the new Regulation or pose a grave threat to the safety and health of the crew, the MD may prohibit the ship from leaving the port until its conditions have been rectified. Upon conviction of a breach of the new Regulation, the owner and/or master of a ship registered in Hong Kong are/is liable to a fine or imprisonment.

11. The MD may also board and inspect any ship of another flag State within Hong Kong waters to ensure its compliance with MLC or conduct an investigation in response to any complaint against the ship. Should any breach of MLC be detected, the MD will deal with the ship concerned according to the enforcement procedures as outlined in paragraph 10.

Others

12. In addition, the Director of Marine may request contracting states of MLC to inspect and certify Hong Kong ships within their waters. He may also inspect and certify non-Hong Kong ships at the request of other contracting states of MLC.

13. In accordance with the MLC, contracting states can recognise competent and independent organizations, and authorize them to carry out inspection and certification activities as mentioned above. The new Regulation will include relevant authorization provisions.

(b) *The Ordinance*

14. In the light of the latest definitions and requirements under MLC, we propose to amend the relevant provisions of the Ordinance to ensure its compliance with the MLC. The major amendments include the following:

- (a) Seafarers' organisations are allowed to provide seafarer recruitment and placement services;
- (b) Employers shall not require seafarers in their employment to share the expenses incurred by employment, recruitment or emergency employment; and
- (c) Under specific circumstances, seafarers are entitled to request for repatriation to their place of origin without paying for the relevant expenses.

15. Furthermore, to introduce the latest international requirements to local laws, we propose amending section 134 of the Ordinance to allow its subsidiary

legislation to refer to requirements under international conventions applicable to Hong Kong through the direct reference approach. As ships registered in Hong Kong are also required to comply with the same international standards and requirements in other ports, the proposed amendment will cause no inconvenience to the ships concerned.

(c) *Existing Subsidiary Legislations under the Ordinance*

16. As all the requirements under two existing subsidiary legislations, namely, the Merchant Shipping (Seafarers) (Provisions and Water) Regulation (Chapter 478E) and Merchant Shipping (Seafarers) (Ships' Doctors) Regulation (Chapter 478H) will be incorporated into the new Regulation, the said subsidiary legislations should be repealed.

17. Moreover, the new Regulation will cover the requirements under some existing subsidiary legislation, and as such the latter will be amended in the light of the requirements under MLC and the enactment of the new Regulation. We, therefore, propose to amend the following ten pieces of subsidiary legislation under the Ordinance:

Chapter 478A	Merchant Shipping (Seafarers) (Allotments) Regulation
Chapter 478C	Merchant Shipping (Seafarers) (Health and Safety: General Duties) Regulation
Chapter 478D	Merchant Shipping (Seafarers) (Hours of Work) Regulation
Chapter 478I	Merchant Shipping (Seafarers) (Crew Accommodation) Regulation
Chapter 478L	Merchant Shipping (Seafarers) (Crew Agreements, Lists of Crew and Discharge of Seafarers) Regulation
Chapter 478O	Merchant Shipping (Seafarers) (Medical Examination) Regulation
Chapter 478Q	Merchant Shipping (Seafarers) (Repatriation) Regulation
Chapter 478R	Merchant Shipping (Seafarers) (Safety Officials and Reporting of Accidents and Dangerous Occurrences) Regulation
Chapter 478X	Merchant Shipping (Seafarers) (Medical Stores) Regulation
Chapter 478AB	Merchant Shipping (Seafarers) (Fees) Regulation

Consultation

18. We have consulted shipowner and seafarers' organisations on the legislative proposals for the implementation of MLC. In general, they support the timely enactment of the amendments concerned to ensure compliance of local legislation with the latest international standards. We also consulted the

Seafarers' Advisory Board³, the Shipping Consultative Committee⁴ and the Committee on the Implementation of International Labour Standards under the Labour Advisory Board⁵ on the legislative proposals in February 2009, August 2010 and November 2012 respectively. They have no objection to the proposals.

Implications of the Proposals on Shipowners, Seafarers, Flag States and Port States

19. When MLC comes into force in Hong Kong, seafarers will enjoy better working and living conditions on board ships registered in Hong Kong. All ships of other flag States engaged in international voyages will also be subject to port inspection to ensure their compliance with MLC. The application of MLC to Hong Kong will have positive impacts on shipping companies with ships registered in Hong Kong in terms of seafarer management, seafarers' benefits and remuneration, occupational safety and health, as well as recruitment and placement, and the design and construction of ships.

Way Forward

20. We plan to introduce the Bill, the new subsidiary legislation and the proposed amendments to the existing sets of subsidiary legislation to the Legislative Council next year.

Advice Sought

21. We welcome Members' views on the above legislative proposals.

Transport and Housing Bureau 4 December 2012

³ Members of Seafarers' Advisory Board, a statutory consultative body established under the Ordinance, comprise representatives of local seafarers' associations and employers, and related government departments.

⁴ Members of Shipping Consultative Committee, a non-statutory consultative body, comprise representatives of the shipping industry, seafarers' associations and trade organisations.

⁵ Members of the Committee on the Implementation of International Labour Standards under the Labour Advisory Board, a non-statutory consultative body, comprise representatives of employers and employees.

Merchant Shipping (Seafarers) (Maritime Labour Convention) Regulation

Summary of major requirements in 14 specified areas in respect of the working and living conditions of seafarers

- (i) Minimum age
- The age of a seafarer working on board shall not be less than 17 years.
 - Seafarers under the age of 18 shall not engage in night work.
 - The employment or engagement of seafarers under the age of 18 for work on board shall be prohibited when the work is likely to jeopardise their health or safety: working in high-pressure atmospheres with the risks from pressure and decompression, such as diving; and working in ships' hospital or taking care of patients on board.
- (ii) Medical certification
- All seafarers on board shall hold a valid medical fitness certificate attesting that they are medically fit to perform the duties they are to carry out on board, and that the requirements of the amended International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW Convention) have been met.
 - The medical fitness certificate shall be issued by a qualified medical practitioner. If the period of validity of a certificate expires in the course of a voyage, the certificate shall remain valid until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that the period shall not exceed three months.
- (iii) Qualifications of seafarers
- Seafarers shall not work on board unless they have completed the training on personal safety on board and have met the standards as stipulated in the STCW Convention.
- (iv) Seafarers' employment agreements
- All seafarers working on board shall have a crew agreement signed by both the seafarer and the shipowner or a representative of the shipowner providing them with decent working and living conditions on board as required by the Maritime Labour Convention, 2006 (MLC).
 - The minimum notice period to be given by the seafarers and shipowners for

the early termination of a crew agreement shall be determined after consultation with the shipowners and seafarers concerned, but shall not be shorter than seven days.

- The following provisions stipulating “shipowners’ liabilities” shall be included in the crew agreement:
 - (a) shipowners shall bear the costs for seafarers working on Hong Kong ships in respect of sickness and injury of the seafarers occurring between the date of commencing duty and the date upon which they are deemed duly repatriated, or arising from their employment between those dates;
 - (b) shipowners shall provide financial security to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard;
 - (c) shipowners shall defray the expense of medical care, including medical treatment and the supply of the necessary medicines and therapeutic appliances, and board and lodging away from home until the sick or injured seafarers have recovered, or until the sickness or incapacity has been declared of a permanent character;
 - (d) shipowners shall pay the cost of burial expenses in the case of seafarers’ death occurring on board or ashore during the period of employment; and
 - (e) shipowners or their representatives shall take measures for safeguarding property left on board by sick, injured or deceased seafarers and for returning it to them or to their next of kin.

- (v) Private recruitment and placement services
 - Shipowners who employ Hong Kong-registered seafarers to work on board shall comply with the relevant requirements of Chapter 478 of the Laws of Hong Kong.
 - For the employment of seafarers to work on board Hong Kong ships, shipowners who use recruitment and placement services that are based in countries or territories in which the MLC does not apply shall ensure compliance with the relevant requirements of the MLC.

- (vi) Hours of work or rest
 - The normal working hours’ standard for seafarers shall be based on an eight-hour day with one day of rest per week and 12 days of public holidays.

- The minimum number of hours of rest for seafarers shall not be less than:
 - (a) ten hours in any 24-hour period; and
 - (b) 77 hours in any seven-day period.
 - The daily 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 the periods shall not exceed 14 hours.
 - Records of seafarers' hours of rest shall be maintained for inspection by the authorities concerned.
- (vii) Manning levels for the ship
- Ships shall be manned by seafarers that are adequate in terms of size in accordance with the minimum safe manning certificate issued by Hong Kong to ensure that they are operated safely and efficiently.
- (viii) Accommodation
- Applicable to ships constructed on or after the date when the MLC comes into effect in Hong Kong. Accommodation shall comply with the requirements relating to:
 - (a) the size of rooms and other accommodation spaces;
 - (b) heating and ventilation;
 - (c) noise and vibration and other ambient factors;
 - (d) sanitary facilities;
 - (e) lighting; and
 - (f) hospital accommodation.
- (ix) On-board recreational facilities
- Applicable to ships constructed on or after the date when the MLC comes into effect in Hong Kong. Appropriate seafarers' recreational facilities, amenities and services shall be provided on board to meet the special needs of seafarers. Furnishings for recreational facilities shall as a minimum include a bookcase and facilities for reading and writing. Facilities such as smoking rooms, showing of films and sports equipment shall also be provided at no cost to seafarers where practicable.
- (x) Food and catering
- Shipowners shall provide food and drinks required on board at no cost.
 - Having regard to the number of seafarers on board, their religious requirements and cultural practices pertaining to food, and the duration and

- Cooks working on ships must be trained and qualified for their positions on board.
- (xi) Health and safety and accident prevention
- Shipowners shall adopt, implement and promote occupational safety and health policies and programmes on ships.
 - Shipowners shall provide reasonable precautions to prevent occupational accidents, injuries and diseases on Hong Kong ships, including measures to reduce and prevent the risk of exposure to harmful levels of ambient factors and chemicals as well as the risk of injury or disease that may arise from the use of equipment and machinery on board.
 - Shipowners are required to report to the Marine Department any occupational accident, injury and disease and the corresponding remedial measures taken.
- (xii) On-board medical care
- Shipowners shall provide seafarers with health protection and medical care at no cost, including essential dental care.
 - Shipowners shall guarantee to provide seafarers with health protection and medical care as comparable as possible to that which is generally available to workers ashore, including prompt access to the necessary medicines, medical equipment and facilities for diagnosis and treatment and to medical information and expertise. Without causing delay to the voyage as far as possible, seafarers shall be allowed to visit a qualified medical doctor or dentist in ports of call.
 - Any Hong Kong ship 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. Ships which do not carry a medical doctor shall have either at least one seafarer on board who is in charge of medical care and administering medicine as part of his regular duties or at least one seafarer on board competent to provide medical first aid.
- (xiii) On-board complaint procedures
- Fair, expeditious and well-documented on-board procedures for handling seafarers' complaints shall be developed for all ships.

- The procedures shall seek to resolve complaints at the lowest level possible. However, in all cases, seafarers shall have a right to complain directly to the master and, where they consider it necessary, to the Marine Department.

(xiv) Payment of wages

- Shipowners shall make payment of wages to seafarers at no greater than monthly intervals and in accordance with the crew agreements.
- Seafarers shall be given a monthly account of the payments due and the amounts paid.
- Shipowners are required to provide seafarers working on board with a means to transmit all or part of their earnings to their families or dependants or legal beneficiaries.