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**Paper for the House Committee meeting on 24 June 2016**

**Report of Subcommittee on Subsidiary Legislation to Give Effect to the  
2006 Maritime Labour Convention**

**Purpose**

This paper reports on the deliberations of the Subcommittee on Subsidiary Legislation to Give Effect to the 2006 Maritime Labour Convention.

**Background**

Maritime Labour Convention

2. The 2006 Maritime Labour Convention ("MLC") was adopted at the International Labour Conference held in February 2006 with the objective of ensuring comprehensive worldwide protection of the rights of seafarers and establishing a level playing field for countries and shipowners by preventing unfair competition from substandard ships and operations. The Convention consolidates and updates the existing International Labour Organization ("ILO") requirements for the employment of seafarers and includes more comprehensive minimum standards for the working conditions of seafarers to secure the right of all seafarers to decent employment.

3. MLC entered into force globally on 20 August 2013, and will enter into force in China on 12 November 2016. The Convention will be extended to Hong Kong after the Central People's Government has notified ILO and after the making of the relevant subsidiary legislation in Hong Kong.

### The subsidiary legislation

4. The Secretary for Transport and Housing ("STH") has made L.N. 69 to L.N. 81 under the various sections of the Merchant Shipping (Seafarers) Ordinance (Cap 478) to implement the relevant requirements prescribed by MLC and to make consequential and related amendments. The Secretary for Financial Services and the Treasury has made L.N. 82 to prescribe fees for the inspection and certification of ships conducted by the Marine Department ("MD") pursuant to MLC under sections 133 and 134 of Cap. 478.

5. Details of the legislative proposals are set out in paragraphs 5 to 10 of the Legislative Council Brief (File Ref: THB(T)PML CR 8/10/150/8) issued by the Administration in May 2016. A summary of the provisions and their effects are set out in paragraph 8 of the Legal Service Division Report on Subsidiary Legislation Gazetted on 20 May 2016 (LC Paper No. LS55/15-16), and are recapitulated as follows:

- (a) L.N. 69 is a new regulation made to implement the major requirements of the Convention covering 16 areas applicable to certain seagoing ships engaged in commercial activities ("regulated ships") such as the minimum requirements for seafarers to work on board a ship (for example, the age of work and hours of rest), the requirements relating to employment contracts and working conditions, the standard of accommodation, the provision of recreational facilities, medical care, food and catering, and financial security to provide assistance to seafarers when abandoned. It also contains the certification requirements and requirements for compliance reports for regulated ships, and provisions that deal with the enforcement and other powers of the Seafarers' Authority;
- (b) L.N. 70 amends the Merchant Shipping (Seafarers) (Allotments) Regulation (Cap. 478A) to provide that certain seafarers may allot all or a part of their wages to other persons under section 4 of Cap. 478A, and that the restriction on the allotment of wages under section 5 of Cap. 478A only applies to seafarers employed to work on coastal-going ships but not to those employed to work on seagoing ships;
- (c) L.N. 71 amends the Merchant Shipping (Seafarers) (Health and Safety: General Duties) Regulation (Cap. 478C) to provide that the employer's duty under section 4(1) of Cap. 478C to ensure the health and safety of seafarers and other persons on board a ship is expanded to include the duty to adopt, implement and promote occupational safety and health policies and programmes,

and the duty to adopt precautions to prevent occupational accidents, injuries and diseases on board the ship. It also makes certain drafting amendments;

- (d) L.N. 72 amends the Merchant Shipping (Seafarers) (Hours of Work) Regulation (Cap. 478D) to confine its application to coastal-going ships registered in Hong Kong or coastal-going ships within the waters of Hong Kong and to make other technical and drafting amendments. It also amends the title of Cap. 478D by replacing "hours of work" by "hours of rest";
- (e) L.N. 73 amends the Merchant Shipping (Seafarers) (Crew Accommodation) Regulation (Cap. 478I) mainly to provide that the existing requirements relating to the accommodation and recreational facilities for seafarers under Cap 478I applies to, among others, Hong Kong ships constructed before the date on which L.N. 73 comes into operation and to provide for offence provisions regarding the contravention of the existing requirements. The maximum penalty for the new offences is a fine at level 5 (\$50,000);
- (f) L.N. 74 amends the Merchant Shipping (Seafarers) (Medical Examination) Regulation (Cap. 478O) to update the medical standards, requirements and criteria for seafarers and the requirements on the issuance of medical fitness certificates under the new MLC requirements;
- (g) L.N. 75 amends the Merchant Shipping (Seafarers) (Official Log Books) Regulation (Cap. 478P) mainly to update the entries required to be made in official log books kept in ships in the Schedule to Cap. 478P consequential to the provisions in L.N. 69;
- (h) L.N. 76 amends the Merchant Shipping (Seafarers) (Repatriation) Regulation (Cap. 478Q) to implement the requirements of the Convention regarding repatriation of seafarers. The amendments include providing for additional circumstances under which seafarers are entitled to be repatriated (such as the expiry of the crew agreement) and the employers' obligations in repatriation, and requiring a copy of Cap. 478Q to be kept on board Hong Kong ships;
- (i) L.N. 77 amends the Merchant Shipping (Seafarers) (Safety Officials and Reporting of Accidents and Dangerous Occurrences) Regulation (Cap. 478R) to implement certain requirements of the Convention relating to the health and safety

protection of seafarers such as the duty to report occupational diseases contracted by the seafarers employed on certain seagoing ships that arise out of their employment. The title of Cap. 478R is also amended to reflect that Cap. 478R also deals with the reporting of occupational diseases;

- (j) L.N. 78 amends the Merchant Shipping (Seafarers) (Medical Stores) Regulation (Cap. 478X) to update, in compliance with the latest international standards, the requirements relating to medicines and medical stores. The amendments provide, among others, that seagoing ships, and passenger-carrying ships that only trade within river trade limits, must keep on board medicines and medical stores in compliance with the prescribed requirements and expired medicines and medical stores must be taken to a pharmacy for destruction;
- (k) L.N. 79 amends the Merchant Shipping (Seafarers) (Code of Safe Working Practices) Regulation (Cap. 478M) to reflect the change in title of Cap. 478R as mentioned in paragraph 5(i) above;
- (l) L.N. 80 and L.N. 81 respectively repeal the Merchant Shipping (Seafarers) (Provisions and Water) Regulation (Cap. 478E) and the Merchant Shipping (Seafarers) (Ships' Doctors) Regulation (Cap. 478H), as the updated requirements have been provided in L.N. 69; and
- (m) L.N. 82 amends the Merchant Shipping (Seafarers) (Fees) Regulation (Cap. 478AB) to provide for fees payable for the inspection of ships and the issue of certain certificates under L.N. 69, to update the definition of office hours and make related amendments, and to amend the fees payable for certain examinations.

## **Commencement**

6. L.N. 69 to L.N. 82 were gazetted on 20 May 2016 and tabled in the Legislative Council on 25 May 2016. They will come into operation on a day to be appointed by STH by notice published in the Gazette.

## **The Subcommittee**

7. At the House Committee meeting held on 27 May 2016, Members agreed that a subcommittee should be formed to examine the subsidiary legislation in detail. The membership list of the Subcommittee is in **Appendix**.

8. Under the chairmanship of Hon James TO, the Subcommittee has held one meeting with the Administration on 7 June 2016.

## **Deliberations of the Subcommittee**

### Enforcement of requirement under the Maritime Labour Convention

9. Subcommittee members note that MLC entered into force globally in 2013, but has not been extended to Hong Kong. The Administration informs the Subcommittee that MLC will enter into force in China on 12 November 2016. After the subsidiary legislation to implement the MLC requirements has been made, the Central People's Government will notify ILO so that MLC will be officially extended to Hong Kong on a date to be specified. The Administration would then gazette notice for the subsidiary legislation to commence operation.

10. Members queries whether MD and relevant authorities in Hong Kong has the legal authority to take enforcement action against ocean-going vessels within Hong Kong waters that fail to comply with the requirements under MLC before the Convention is extended to and takes effect in Hong Kong. The Administration explains that while enforcement authorities in Hong Kong would not be able to prosecute non-compliance of MLC requirements regarding working and living conditions of seafarers, they will be able to prosecute non-compliance of requirements under the local legislation concerning areas such as accommodation standards, hours of work, etc. As the Convention has entered into force globally since 2013, owners and operators of Hong Kong-registered ships are aware of the MLC requirements through MD and classification societies in Hong Kong.

### Standards of enforcement

11. Members note that the proposed subsidiary legislation will cover the majority of MLC requirements, and that the Administration has adopted the "direct reference approach" in making and amending the subsidiary legislation where relevant provisions under international agreements regarding technical details such as requirements on crew accommodation and financial security are referenced in local legislation. Subcommittee members query whether there are provisions in the proposed subsidiary legislation where the standard of

requirements are higher than those under MLC. The Administration informs members that according to MLC, a seafarer working on board a ship should be at least 16 years old. The minimum age of a seafarer working on board a Hong Kong ship is 17 as prescribed in sections of the Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (L.N. 69). Besides, the restriction under Cap. 478 which stipulated that persons aged 35 years or above cannot be registered with MD as seafarers, has been removed by the Merchant Shipping (Seafarers) (Amendment) Bill 2013 (introduced in 2013 to implement MLC in Hong Kong, but has not yet come into operation). The other provisions closely follow the requirements and standards of MLC.

Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (L.N. 69)

12. Members note that section 18 of the proposed Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (L.N. 69) provides that a shipowner who engages an agent operating in a country which has not ratified the MLC, is required to ensure that the agent complies with the requirements specified in subsection (2). Members note that the duties imposed on an agent do not exactly mirror those for a shipowner under section 12 in recruiting seafarers.

*Responsibilities of shipowner and agent*

13. Members note that under section 12(3) of L.N. 69, a shipowner must ensure that a seafarer must be given a signed original of the written employment agreement. However, in case where the seafarer is recruited through an agent, the agent is only required to have measures in place to ensure that the seafarer receives a copy of the agreement under section 18(2)(d) of L.N. 69. Members have queried the reasons for the discrepancy. The Administration explains that where a seafarer is recruited through an agent, it remains the responsibility of the shipowner to ensure that the seafarer is given a signed original of the employment.

14. Members also point out that under section 12(2)(a) of L.N. 69, a seafarer must be given an opportunity to examine and seek advice on the employment agreement before entering into it. However, under section 18(2)(d)(iii), the agent engaged to recruit seafarers on behalf of the shipowner is only required to have measures in place to ensure that the seafarer may examine the employment agreement before it is signed.

15. Members suggest that the requirement under section 12(2)(a), which stipulates that a seafarer should be given an opportunity to seek advice on an employment agreement before entering into it should be reflected in section 18(2)(d)(iii) as well. The Administration accepts the Subcommittee's

suggestion and undertakes to make necessary changes before the commencement of L.N. 69.

*Records of inspection*

16. The Subcommittee notes that sections 28, 34 and 39 impose a duty on the master of a ship to keep a proper record on different matters in relation to the accommodation, recreational and communication facilities, provisions and drinking water of the seafarers. L.N. 69 provides that the facilities must be regularly inspected, and a record of inspection must be kept. Sections 28(5) and 34(5) specify the types of information that should be contained in the record of inspection in respect of accommodation, recreational and communication facilities. However, there is no corresponding provision under section 39 of L.N. 69 for the records of inspection in respect of provisions and drinking water. Members have queried the justification of the discrepancy as it appears to them that provisions and drinking water should be as important as accommodation, recreation and communication facilities.

17. The Administration explains to the Subcommittee that it is already required under existing legislation for the master of a ship to keep records of drinking water and food provision in an official log book, and the details are not repeated in L.N. 69.

*Other drafting issues*

18. The Subcommittee also notes that under section 2, in the definition of "Ships' Cooks Convention", the term "Certification of Ships' Cooks Convention, 1946" is rendered as "1946年船上廚師發證書公約" in the Chinese text. Members note that in the Chinese text of paragraph 3 of Guideline B3.2.2. to 2006 Maritime Labour Convention, the above term is rendered as "1946年船上廚師發證公約". The Administration informs the Subcommittee that there is no authentic Chinese version of the term, but agrees that suitable amendment will be made to L.N. 69 to adopt "1946年船上廚師發證公約" as the proper Chinese rendition.

19. The Administration indicates that amendments to L.N. 69 as suggested by the Subcommittee would be followed-up separately before it commences operation. The Subcommittee has no objection to the Administration's proposed arrangement.

20. The Subcommittee has completed the scrutiny of L.N. 69 to L.N. 82 to give effect to MLC, and supports the proposed regulations subject to the amendments to L.N. 69 to be followed-up by the Administration.

**Advice sought**

21. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 4  
Legislative Council Secretariat  
22 June 2016



**Subcommittee on Subsidiary Legislation to  
Give Effect to the 2006 Maritime Labour Convention**

**Membership List**

<b>Chairman</b>	Hon James TO Kun-sun
<b>Members</b>	Hon Cyd HO Sau-lan, JP Hon WONG Kwok-kin, SBS Hon Frankie YICK Chi-ming, JP Hon SIN Chung-kai, SBS, JP Hon POON Siu-ping, BBS, MH
	(Total : 6 members)
<b>Clerk</b>	Mr Daniel SIN
<b>Legal Adviser</b>	Mr Alvin CHUI