

立法會
Legislative Council

LC Paper No. LS50/17-18

**Paper for the House Committee Meeting
on 13 April 2018**

**Legal Service Division Report on
Sailors Home and Missions to Seamen Incorporation
(Amendment) Bill 2018
(Member's Bill)**

I. SUMMARY

- 1. The Bill**

The Bill is a Member's Bill introduced by Hon Frankie YICK Chi-ming, SPS, JP.

The Bill seeks to amend the Sailors Home and Missions to Seamen Incorporation Ordinance (Cap. 1042) and the Sailors Home and Missions to Seamen Regulations (Cap. 1042A) to:

 - (a) provide for the change of the corporate name of "The Sailors Home and Missions to Seamen" to "The Sailors Home and Mission to Seafarers";
 - (b) provide for the change in the composition and procedures of the committee of the corporation;
 - (c) replace references to "Church of England" by "Hong Kong Sheng Kung Hui";
 - (d) adapt certain references to bring them into conformity with the status of Hong Kong as a Special Administrative Region of the People's Republic of China; and
 - (e) make related and technical amendments.
- 2. Public Consultation**

It is not stated in the Legislative Council Brief that the public has been consulted on the Bill.
- 3. Consultation with LegCo Panel**

The Panel on Economic Development, the Panel on Administration of Justice and Legal Services and the Panel on Transport were not consulted on the Bill.
- 4. Conclusion**

No difficulties have been identified in the legal and drafting aspects of the Bill. Subject to Members' views, the Bill is ready for resumption of Second Reading debate.

II. REPORT

The date of First Reading of the Sailors Home and Missions to Seamen Incorporation (Amendment) Bill 2018 ("Bill") is 11 April 2018. Members may refer to the Legislative Council ("LegCo") Brief on the Bill dated 1 March 2018 issued by Hon Frankie YICK Chi-ming, SPS, JP for further details.

Object of the Bill

2. The Bill seeks to amend the Sailors Home and Missions to Seamen Incorporation Ordinance (Cap. 1042) and the Sailors Home and Missions to Seamen Regulations (Cap. 1042A) to:

- (a) provide for the change of the corporate name of "The Sailors Home and Missions to Seamen" to "The Sailors Home and Mission to Seafarers", and to replace references to "Seamen" by "Seafarers" following the terminology used in the Maritime Labour Convention, 2006 ("Convention");
- (b) provide for the change in the composition and procedures of the committee of the corporation;
- (c) replace references to "Church of England" by "Hong Kong Sheng Kung Hui" following the localization of the Church of England in Hong Kong in 1998;
- (d) adapt certain references to bring them into conformity with the status of Hong Kong as a Special Administrative Region ("SAR") of the People's Republic of China ("PRC"); and
- (e) make related and technical amendments.

Background

3. This is a Member's Bill. The Member in charge is Hon Frankie YICK Chi-ming, SPS, JP. The Administration has confirmed that the Bill does not relate to public expenditure, political structure, the operation of Government, or Government policies. The Law Draftsman has also confirmed that the Bill conforms to the requirements of Rule 50 of the Rules of Procedure of the LegCo ("RoP") and the general form of Hong Kong legislation.

4. Cap. 1042 provides for the incorporation of the Sailors Home and Missions to Seamen ("SHMS") in 1930 including the objects and powers of the corporation and the composition of its committee. Cap. 1042A provides for the administration of SHMS, the procedures for meetings of its committee, and the management of the premises and property of SHMS.

5. Section 4 of Cap. 1042 sets out the objects of SHMS which includes promoting the spiritual moral and physical well-being of seafarers and their families regardless of religion or nationality. According to paragraph 2 of the LegCo Brief, SHMS is the only organization in Hong Kong providing welfare services to all international and local seafarers to fulfil Hong Kong's international obligation for the provision of port welfare services.

Provisions of the Bill

6. The Bill seeks to amend both Cap. 1042 and Cap. 1042A. The key provisions of the Bill are summarized in the following paragraphs.

Change of the corporate name

7. The Bill seeks to replace all the references to "Seamen" in Cap. 1042 and Cap. 1042A by "Seafarers"¹ following the terminology used in the Convention² to cover any person who is employed or engaged or works on board a ship regardless of gender and rank. Clause 6(1) of the Bill seeks to amend section 2(1) of Cap. 1042 to change the name of the corporation from "The Sailors Home and Missions to Seamen" to "The Sailors Home and Mission to Seafarers". In that regard, the Bill seeks to amend the references to "Seamen" in the title and regulations 1 and 2 of Cap. 1042A to "Seafarers" to reflect the change of the corporate name.

8. Clause 6(7) of the Bill seeks to add a new section 2(4) to Cap. 1042 to the effect that the rights, obligations and liabilities of the corporation are not affected by the change of the corporate name.

Change in the composition and procedures of the committee

9. SHMS is managed by a committee ("Committee"), the composition of which is provided in section 2(2) of Cap. 1042. Under the existing section 2(2), the Committee is composed of the Bishop of the Church of England

¹ According to paragraph 1(f) of Article II of the Convention, seafarer means any person who is employed or engaged or works in any capacity on board a ship to which the Convention applies.

² Hong Kong is in the process of formally ratifying the Convention which is an International Labour Organization's instrument setting out seafarers' right to decent conditions of work.

known as the Bishop of Victoria, Director of Marine, representatives of Jardine, Matheson & Company Limited, The Hong Kong General Chamber of Commerce, The Missions to Seamen in London, Her Majesty's Navy, the honorary treasurer of SHMS and co-opted members.

10. According to paragraph 4 of the LegCo Brief, the Committee currently includes the Archbishop of the Hong Kong Sheng Kung Hui, ship owners and managers in Hong Kong, and representatives from the HKSAR Government. Representatives of the three seafarer unions in Hong Kong have been invited to attend meetings of the Committee as "de-facto" members since January 2011. Clause 6 of the Bill seeks to amend section 2(2) of Cap. 1042 to update the composition of the Committee, in particular, to provide for the nomination of nominated representatives of the three seafarer' unions in Hong Kong (namely Amalgamated Union of Seafarers, Hong Kong, Hong Kong Seamen's Union and Merchant Navy Officers' Guild – Hong Kong) to the Committee. In view of the possible increase in the number of committee member under the proposed amendments to section 2(2) of Cap. 1042, clause 17(6) seeks to amend the quorum of a general meeting or a special meeting of the Committee under regulation 6(2) of Cap. 1042A from four to six.

11. The Bill also seeks to amend regulations 4, 5, 6(2) and 7 of Cap. 1042A respectively to make changes to the regulations relating to the holding of general and special meetings of the Committee.

Replacing references to "Church of England" by "Hong Kong Sheng Kung Hui"

12. To reflect the localization of the Church of England in Hong Kong in 1998 with the establishment of the Hong Kong Sheng Kung Hui under the leadership and jurisdiction of the Archbishop of the Hong Kong Sheng Kung Hui, clause 8 of the Bills seek to replace "Church of England" in section 4(1) and (2) of Cap. 1042 by "Hong Kong Sheng Kung Hui", and clause 6(2) of the Bill seeks to replace "the Bishop of the Church of England known as the Bishop of Victoria" by "the Archbishop of the Hong Kong Sheng Kung Hui" in section 2(2) of Cap. 1042.

13. Under regulation 13 of Cap. 1042A, the appointment or dismissal of the chaplain, assistant chaplains and readers or any of them is made by The Missions to Seamen in London, subject to the approval of the Bishop of the Diocese and made after consultation with the Committee. Clause 20 of the Bill seeks to amend regulation 13 to reflect that the assistant chaplains and readers are no longer appointed by The Mission to Seafarers (formerly known as The Mission to Seamen) while the appointment or dismissal of chaplain is made by The Mission to Seafarers, and to reflect the change in the designation after the localization of the Church of England in Hong Kong in 1998 with the establishment of the Hong Kong Sheng Kung Hui.

Amendments to reflect the status of Hong Kong as a SAR of PRC

14. Under section 2(2)(f) of Cap. 1042, members of the Committee include a representative of Her Majesty's Navy appointed by the Committee. Clause 6(5) of the Bill seeks to repeal section 2(2)(f) of Cap. 1042 to bring the provision into conformity with the status of Hong Kong as a SAR of PRC. Further, the Bill seeks to adopt certain references in Cap. 1042 and Cap. 1042A to bring them into conformity with the status of Hong Kong as a SAR of PRC. These include replacing "Governor in Council" by "Chief Executive in Council", replacing "Her Majesty the Queen, Her Heirs or Successors" by "the Central Authorities or the Government of the Hong Kong Administrative Region under the Basic Law and other laws", and replacing "the Colony" by "Hong Kong".

Saving provision

15. Clause 25 provides for the saving of the rights of the Central Authorities or the Government of the Hong Kong Special Administrative Region under the Basic Law and other laws, or the rights of any body politic or corporate or of any other person except such as are mentioned in the Bill and those claiming by, from or under them. The saving provision is required, under RoP 50(8), to be included in the Bill, which is a "private bill" as defined in the Private Bills Ordinance (Cap. 69).³

Other provisions

16. Other provisions of the Bill include repealing obsolete provisions and replacing certain terms with gender-neutral expressions.

Commencement

17. There is no commencement provision in the Bill. By virtue of section 20(2)(a) of the Interpretation and General Clauses Ordinance (Cap. 1), the Bill, if passed, would commence on the day on which it is published in the Gazette.

Public Consultation

18. It is not stated in the LegCo Brief that the public has been consulted. However, according to paragraph 8 of the LegCo Brief, the Administration, including the relevant government bureaux and departments, and the relevant statutory authorities, are in support of the Bill.

³ Under section 2 of the Private Bills Ordinance (Cap. 69), "private bill" means a bill which –

- (a) provides primarily for the particular interest or benefit of any individual, association or body corporate rather than the interest or benefit of the public; and
- (b) is not a Government measure.

Consultation with LegCo Panel

19. The Clerk to the Panel on Economic Development has advised that the Panel was not briefed on the Bill.

20. According to the Clerk to the Panel on Administration of Justice and Legal Services ("AJLS Panel") and the Panel on Transport ("Transport Panel"), neither the AJLS Panel nor the Transport Panel has been consulted on the Bill.

Conclusion

21. No difficulties have been identified in the legal and drafting aspects of the Bill. Subject to Members' view, the Bill is ready for resumption of Second Reading debate.

Prepared by

Rachel DAI
Assistant Legal Adviser
Legislative Council Secretariat
10 April 2018