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**Paper for the House Committee meeting on 30 November 2018**

**Report of the Subcommittee on Subsidiary Legislation to Commence the Requirements of the 2006 Maritime Labour Convention in Hong Kong**

**Purpose**

This paper reports on the deliberations of the Subcommittee on Subsidiary Legislation to Commence the Requirements of the 2006 Maritime Labour Convention in Hong Kong ("the Subcommittee").

**Background**

2006 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. MLC 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 in China on 12 November 2016. The Convention will be extended to Hong Kong on 20 December 2018. In this connection, the Secretary for Transport and Housing ("STH") has made 15 commencement notices and two amendment regulations in order to bring into operation the provisions in the Merchant Shipping (Seafarers) Ordinance (Cap. 478) ("the Ordinance") and its subsidiary legislation that implement the requirements of MLC, certain relevant amendments as well as a provision in the Schedule to the Administrative Appeals Board Ordinance (Cap. 442) which relates to MLC.

L.N. 174 and L.N. 175

4. L.N. 174 is made by STH under sections 86, 96, 97, 119 and 134 of the Ordinance to amend the Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (Cap. 478AF). The principal purpose of L.N. 174 is to require a recruitment and placement agent of seafarers operating in a country that is not a party to MLC to have measures in place to ensure that the seafarers should be given an opportunity to examine and seek advice on their employment agreement before entering into it. This amendment reflects the views of the Subcommittee on Subsidiary Legislation to Give Effect to the 2006 Maritime Labour Convention, which was formed to study various regulations set out in paragraph 9(a) to (m) below to implement the requirements prescribed by MLC. L.N. 174 also amends the definition of "compliance report" in section 2(1) of Cap. 478AF to tally with that of "maritime labour certificate", and makes certain textual amendments.

5. L.N. 175 is made by STH under sections 119 and 134 of the Ordinance to amend the Merchant Shipping (Seafarers) (Official Log Books) (Amendment) Regulation 2016 (L.N. 75 of 2016). The amendments in L.N. 175, which are consequential to the making of the Merchant Shipping (Safety) (Navigational Equipment and Safety of Navigation) Regulation (Cap. 369BA) in 2016, are as follows:

- (a) including the reference to Cap. 369BA in the Merchant Shipping (Seafarers) (Official Log Books) Regulation (Cap. 478P) as amended by L.N. 75 of 2016; and
- (b) removing the reference to the Merchant Shipping (Safety) (Arrangements for Embarkation and Disembarkation of Pilots) Regulation (Cap. 369AU), which have been repealed following the making of Cap. 369BA.

6. L.Ns. 174 and 175 come into operation on the day on which they are published in the Gazette, i.e. 19 October 2018.

L.N. 176

7. L.N. 176 is made by STH under section 1(2) of the Merchant Shipping (Seafarers) (Amendment) Ordinance 2013 ("the 2013 Ordinance") to appoint 20 December 2018 as the day on which uncommenced provisions of the 2013 Ordinance (except Subdivisions 3, 4, 6 and 8 of Division 1 of Part 3<sup>1</sup>) come into operation.

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<sup>1</sup> These remaining uncommenced provisions (i.e. Subdivisions 3, 4, 6 and 8 of Division 1 of Part 3) relate to amendments to provisions in various pieces of subsidiary legislation under the Ordinance which have subsequently been repealed after the 2013 Ordinance was enacted in 2013. According to the Administration, these remaining uncommenced provisions no longer have function to serve and are redundant. The Administration would arrange to repeal these provisions in due course.

8. The provisions of the 2013 Ordinance to be commenced by L.N. 176 relate to various requirements under MLC, including the recruitment and supplying of seafarers by seafarers' organizations, the requirement of written employment agreements between seafarers and shipowners, the right of seafarers to complain to the masters of Hong Kong registered ships and directly to the Superintendent of the Mercantile Marine Office, miscellaneous amendments on the age restrictions of and allotment of wages by seafarers, and related and consequential amendments to various pieces of subsidiary legislation under the Ordinance.

L.N. 177 to L.N. 190

9. By L.N. 177 to L.N. 190, STH appoints 20 December 2018 as the day on which the following regulations (including an uncommenced provision respectively in items (c) and (n) below) come into operation:

- (a) Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (Cap. 478AF);
- (b) Merchant Shipping (Seafarers) (Allotments) (Amendment) Regulation 2016 (Cap. 478A) (L.N. 70 of 2016);
- (c) section 4 of the Merchant Shipping (Seafarers) (Health and Safety: General Duties) (Amendment) Regulation 2016<sup>2</sup> (L.N. 71 of 2016);
- (d) Merchant Shipping (Seafarers) (Hours of Work) (Amendment) Regulation 2016 (L.N. 72 of 2016);
- (e) Merchant Shipping (Seafarers) (Crew Accommodation) (Amendment) Regulation 2016 (L.N. 73 of 2016);
- (f) Merchant Shipping (Seafarers) (Official Log Books) (Amendment) Regulation 2016 (L.N. 75 of 2016);
- (g) Merchant Shipping (Seafarers) (Repatriation) (Amendment) Regulation 2016 (L.N. 76 of 2016);

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<sup>2</sup> Section 4 provides that the employer's duty to ensure the health and safety of seafarers and other persons on board a ship is expanded to include the adoption, implementation and promotion of occupational safety and health policies and programmes, and the adoption of precautions to prevent occupational accidents, injuries and diseases on board the ship. Other provisions of L.N. 71 of 2016 came into operation on 1 December 2016 (L.N. 153 of 2016).

- (h) Merchant Shipping (Seafarers) (Safety Officials and Reporting of Accidents and Dangerous Occurrences) (Amendment) Regulation 2016 (L.N. 77 of 2016);
- (i) Merchant Shipping (Seafarers) (Medical Stores) (Amendment) Regulation 2016 (L.N. 78 of 2016);
- (j) Merchant Shipping (Seafarers) (Code of Safe Working Practices) (Amendment) Regulation 2016 (L.N. 79 of 2016);
- (k) Merchant Shipping (Seafarers) (Provisions and Water) Regulation (Repeal) Regulation (L.N. 80 of 2016);
- (l) Merchant Shipping (Seafarers) (Ships' Doctors) Regulation (Repeal) Regulation (L.N. 81 of 2016);
- (m) Merchant Shipping (Seafarers) (Fees) (Amendment) Regulation 2016 (L.N. 82 of 2016); and
- (n) section 3(6) of the Administrative Appeals Board Ordinance (Amendment of Schedule) Order 2016 (L.N. 143 of 2016).

10. The regulations set out in paragraph 9(a) to (m) were made to implement the detailed requirements of MLC in relation to the working and living conditions of seafarers on seagoing ships so as to protect the rights of all seafarers to decent employment. These regulations provide for various matters including the major requirements applicable to certain seagoing ships engaged in commercial activities, such as the requirements relating to employment contracts and working conditions, standard of accommodation, allotment of wages of seafarers, employers' duties to ensure the health and safety of seafarers, updating the contents required of official log books, repatriation of seafarers, requirements relating to health and safety protection of seafarers, updating the requirements relating to medicine and medical stores, and prescribing fees for the inspection and certification of ships by the Marine Department ("MD").

11. Section 3(6) of L.N. 143 of 2016 referred to in paragraph 9(n) provides that a party aggrieved by the decisions made by the Seafarers' Authority under section 100(2) and (3) of Cap. 478AF may appeal to the Administrative Appeals Board ("AAB"). The other provisions of L.N. 143 of 2016, which provide for appeals to AAB against decisions made by the Seafarers' Authority under various regulations under the Ordinance, already came into operation on 1 December 2016 and 1 January 2017.

## **The Subcommittee**

12. At the House Committee meeting held on 26 October 2018, Members agreed to form a subcommittee to study the 17 pieces of subsidiary legislation. The membership list of the Subcommittee is in the **Appendix**.

13. Under the chairmanship of Hon James TO Kun-sun, the Subcommittee held one meeting on 7 November 2018 with the Administration to examine the subsidiary legislation. As agreed at the meeting, the Chairman moved a motion at the Council meeting of 14 November 2018 to extend the scrutiny period of the 17 pieces of subsidiary legislation to the Council meeting of 12 December 2018. The motion was passed at the Council meeting of 14 November 2018.

## **Deliberations of the Subcommittee**

14. Members in general support the 17 pieces of subsidiary legislation to commence the relevant provisions in the Ordinance and its subsidiary legislation on 20 December 2018 to implement the requirements under MLC, which will be officially extended to Hong Kong on the same day. The major deliberations of the Subcommittee are set out in the ensuing paragraphs.

### Compliance and enforcement

15. Members note that MLC sets out a comprehensive set of global standards for the working and living conditions of seafarers and seeks to protect the welfare of seafarers. These requirements will be extended to Hong Kong on 20 December 2018. Concern has been raised by the Subcommittee about the readiness of the industry to comply with the new requirements and the enforcement actions to be taken by the Administration against non-compliance with MLC.

16. The Administration explains that MLC entered into force globally on 20 August 2013. Hong Kong registered ships may be inspected against the MLC requirements in ports of ILO members which have ratified MLC, even though MLC is not yet applicable to Hong Kong. To prepare for this, MD has made arrangements for recognized organizations ("ROs") to conduct inspection on Hong Kong ships against the MLC requirements and to issue statements of compliance on an administrative basis to ships that fully meet those requirements since then. Hong Kong ships have no compliance problems during the interim period between the commencement of MLC and its application to Hong Kong. As MD has engaged the industry at an early stage in drawing up the legislative proposals, the industry should have enough time to prepare for the implementation of the legislative requirements.

17. Upon implementation, the Administration advises that shipowners will be required to apply for a Declaration of Maritime Labour Compliance ("the Declaration") from MD by providing details on the measures to be put in place. A Maritime Labour Certificate ("the Certificate"), valid for five years, will be issued by MD or an RO to shipowners on behalf of MD after the ship is inspected by either a Government surveyor or an RO and found to conform to the requirements stipulated in the Declaration. All ships will be required to undergo an intermediate inspection between the second and third anniversaries of the Certificate, and will be inspected again before its renewal. To monitor compliance, MD will be given the power to investigate related complaints. Government surveyors may board any ship registered in Hong Kong or within Hong Kong waters for this purpose. If there is any evidence that the ship concerned does not comply with MLC or fails to take corrective action for breaches, MD may detain the ship or withdraw its Certificate.

18. Notwithstanding, the Subcommittee urges the Administration to review the enforcement situation of the requirements of MLC in Hong Kong after the commencement of the relevant provisions. The Administration agrees to report annually to the Panel on Economic Development in this regard in the first two years after the commencement of the relevant provisions in the Ordinance and its subsidiary legislation.

#### Publicity programmes

19. The Subcommittee notes from the Administration that there are some 53 000 seafarers registered in Hong Kong, including over 30 000 Chinese seafarers with 200 of them being local people and some 20 000 from India and the Philippines. Members are concerned whether the seafarers registered in Hong Kong, especially those who have not engaged in the shipping industry for some years, are well informed about the new requirements. They urge the Administration to publicize the relevant information to seafarer unions by conducting briefing sessions at major conferences and by means of leaflets and newsletters of the industry to ensure that all seafarers are duly informed.

20. The Administration advises that it has consulted shipowners' and seafarers' organizations and some relevant advisory committees including the Seafarers' Advisory Board, the Shipping Consultative Committee and the Committee on the Implementation of International Labour Standards under the Labour Advisory Board on the new MLC requirements. Nevertheless, it will expand the current publicity programmes to enhance the trade's awareness of the new requirements.

Requirements for official log books as amended by L.N.175

21. The Subcommittee notes that under the Ordinance, an official log book in the prescribed form should be kept in every Hong Kong ship. In response to a member's enquiry about the major differences between the existing and new requirements in relation to the form of the official log books as amended by L.N. 175, the Administration advises that the new prescribed form will include addition of the inspection record carried out with respect to the supply of provisions and drinking water as well as the record in relation to seafarers' claims to complain to the Superintendent.

**Recommendation**

22. The Subcommittee in general supports the 17 pieces of subsidiary legislation and will not propose any amendment to them. The Subcommittee also urges the Administration to report annually to the Panel on Economic Development on the enforcement situation of the requirements of MLC in Hong Kong in the first two years after the commencement of relevant provisions in the Ordinance and its subsidiary legislation.

**Advice sought**

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

**Subcommittee on Subsidiary Legislation to Commence the Requirements of  
the 2006 Maritime Labour Convention in Hong Kong**

**Membership list**

**Chairman**                      Hon James TO Kun-sun

**Members**                      Hon Steven HO Chun-yin, BBS  
   Hon Frankie YICK Chi-ming, SBS, JP  
  
   (Total : 3 members)

**Clerk**                              Ms Shirley CHAN

**Legal Adviser**                Ms Vanessa CHENG