

立法會

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Paper for the House Committee meeting on 24 May 2019

Report of the Subcommittee on Subsidiary Legislation to Implement the Latest Requirements under Conventions of the International Maritime Organization

Purpose

This paper reports on the deliberations of the Subcommittee on Subsidiary Legislation to Implement the Latest Requirements under Conventions of the International Maritime Organization ("the Subcommittee").

Background

Conventions under the International Maritime Organization

2. The International Maritime Organization ("IMO") is a specialized agency under the United Nations responsible for improving maritime safety and preventing pollution from ships. China is among the 171 member states of IMO while Hong Kong, China is an associate member. Safety standards prescribed by IMO are set out in various international conventions ("IMO Conventions"). It is an obligation for flag states to update local legislation to give effect to the latest IMO requirements as revised from time to time.

3. Since 2014, IMO had adopted several new requirements under the International Convention for the Safety of Life at Sea ("SOLAS") and the International Convention for the Prevention of Pollution from Ships ("MARPOL") in relation to ships operating in polar waters (i.e. Arctic and Antarctic waters), and under Annex IV to MARPOL in relation to the discharge of sewage from passenger ships within the Baltic Sea Special Area. SOLAS governs the standards for the construction, equipment and operation of ships to ensure maritime safety. It was adopted in 1974 and came into force internationally in 1980. Different aspects of maritime safety are covered under different chapters of the Annex to SOLAS. MARPOL seeks to protect the marine environment and minimize pollution arising from ship operations. It was adopted

in 1973 and came into force internationally in 1983. Its six Annexes regulate the discharge of different pollutants from ships.

The subsidiary legislation

4. The Secretary for Transport and Housing made L.N. 44 to L.N. 48 to implement the latest requirements under SOLAS and MARPOL. These two international conventions are implemented in Hong Kong through the Merchant Shipping (Safety) Ordinance (Cap. 369) and the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413) and their subsidiary legislation respectively. The requirements will apply to Hong Kong-registered ships ("Hong Kong ships") navigating in Polar waters or within the Baltic Sea Special Area.

5. Details of the requirements are set out in paragraphs 5 to 9 of the Legislative Council Brief (File ref: THB(T)PML CR 8/10/130/45) issued by the Administration in March 2019. A summary of the provisions under L.N. 44 to L.N. 48 and their legal effects are set out in paragraphs 8 to 10 of the Legal Service Division Report on Subsidiary Legislation Gazetted on 29 March 2019 (LC Paper No. LS64/18-19), and are recapitulated in paragraphs 6 to 9 below.

L.N. 44

6. L.N. 44 is a new regulation made under sections 107 and 112B of Cap. 369 to give effect to the requirements under the International Code for Ships Operating in Polar Waters ("Polar Code")¹ adopted by IMO in relation to the safety of ships operating in polar waters. Under L.N. 44, certain Hong Kong ships operating in polar waters must have a Polar Ship Certificate which must be kept on board. Under Part 2 of L.N. 44, a Hong Kong ship operating in polar waters must comply with the applicable requirements in the Polar Code. Contravention of the relevant provisions is an offence and is subject to a maximum penalty of a fine at level 4 (currently \$25,000) and imprisonment for two years.

7. L.N. 44 also provides for the following matters:

- (a) the power of the Director of Marine to issue Polar Ship Certificates, in relation to its form, duration, cessation, cancellation and alteration of such Polar Ship Certificates (Part 3);
- (b) types of surveys that are required to be carried out for a passenger ship and a cargo ship before a Polar Ship Certificate is issued or

¹ The Polar Code, which came into force in 2017, sets out requirements in various aspects including the safety of ship operation and the protection of the marine environment in polar waters.

renewed (Part 4); and

- (c) the defence to certain offences in Part 2 and transitional arrangements (Part 5).

L.N. 45 to L.N. 48

8. L.N. 45 to L.N. 48 are made under sections 3 and 3A of Cap. 413 to implement various requirements of the Polar Code and the relevant amendments to MARPOL in relation to the protection of marine environment. The key provisions are set out below:

- (a) L.N. 45 amends the Merchant Shipping (Prevention of Oil Pollution) Regulations (Cap. 413A) to provide that oil or oily mixtures must not be discharged into the sea from Hong Kong ships in Arctic waters and Hong Kong ships that are constructed on or after 1 January 2017 must not operate in polar waters unless certain requirements in relation to the structure and arrangements of the ship have been complied with;
- (b) L.N. 46 amends the Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations (Cap. 413B) to provide that noxious liquid substances or mixtures containing any noxious liquid substances as defined in Annex II of MARPOL must not be discharged into the sea from Hong Kong ships in Arctic waters. Further, Hong Kong ships that are constructed on or after 1 January 2017 and operating in polar waters must not load or carry certain noxious liquid substances unless certain conditions are complied with;
- (c) L.N. 47 amends the Merchant Shipping (Prevention of Pollution by Sewage) Regulation (Cap. 413K) to prohibit certain ships operating in polar waters and certain passenger ships within the Baltic Sea Special Area from discharging sewage into the polar waters and the Baltic Sea Special Area unless they have, among other things, an approved sewage treatment system in operation; and
- (d) L.N. 48 amends the Merchant Shipping (Prevention of Pollution by Garbage) Regulation (Cap. 413O) to impose additional requirements for discharge of garbage (such as food wastes) from certain ships into the sea in Arctic waters and the Antarctic area.

9. The Administration has, pursuant to section 112B of Cap. 369 and section 3A of Cap. 413, adopted the direct reference approach in L.N. 44 to L.N. 48 by referring directly to SOLAS, MARPOL and the Polar Code, as

updated from time to time. According to the Transport and Housing Bureau, this approach allows the local legislation to remain up-to-date as far as practicable.

Commencement

10. L.N. 44 to L.N. 48 were gazetted on 29 March 2019 and tabled in the Legislative Council on 3 April 2019. They will come into operation on 31 May 2019.

The Subcommittee

11. At the House Committee meeting held on 12 April 2019, Members agreed to form a subcommittee to study the five pieces of subsidiary legislation. The membership list of the Subcommittee is in the **Appendix**.

12. Under the chairmanship of Hon Frankie YICK Chi-ming, the Subcommittee held one meeting on 29 April 2019 with the Administration to examine the five items of subsidiary legislation.

13. To allow more time for the Subcommittee to scrutinize the subsidiary legislation, the Chairman of the House Committee had given notice to move a motion at the Council meeting of 17 April 2019 to extend the scrutiny period of the five items of subsidiary legislation. Since the motion could not be dealt with before the adjournment of the said Council meeting, the period for amending the subsidiary legislation expired at the Council meeting of 17 April 2019.

Deliberations of the Subcommittee

Progress of the incorporation of international maritime conventions

14. Subcommittee members noted that the Polar Code was approved by IMO in November 2014 and had come into force in 2017. However, there had been delays in incorporating requirements of the Polar Code in local legislation. In response, the Administration explained that it regularly monitored and examined the incorporation of the IMO's requirements into local legislation, upon the passage of the new IMO resolutions each year. The Administration had endeavoured to expedite the legislative process by setting up a task force to examine the incorporation of the IMO's latest requirements into local legislation and had adopted a direct reference approach where appropriate to keep local legislation up-to-date with the latest requirements of IMO conventions as far as practicable.

15. In response to members' enquiries about the details of the legislative schedule, the Administration advised that two sets of primary legislation and two sets of subsidiary legislation related to requirements of IMO conventions which had come into force before 2018 were being processed. The two sets of primary legislation being drafted concerned the safety of freight containers and updated limits of liability under the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea, 2002; and the other two sets of subsidiary legislation being processed were respectively related to enhanced technical requirements of oil sludge (residue) tanks on ships and records on discharge of garbage from ships.

Compliance with the latest IMO requirements

16. Members raised concerns about the compliance of Hong Kong ships with the latest IMO requirements. In response to members' queries on the procedures adopted by the Administration to enforce compliance of ships with IMO requirements, the Administration said that ships had to be inspected by recognized organizations before they were put into service to ensure that the ships and the equipment onboard complied with the relevant regulations as well as requirements under relevant international conventions. The Marine Department ("MD") would conduct sample checks to ensure the standards of construction, equipment and operation of the ships. Ships were also subject to the inspections by the relevant authorities at the overseas ports.

17. Members suggested that in order to maintain Hong Kong's international reputation as a major port, the Administration should step up inspection of ships, including the conduct of regular spot checks, to ensure compliance with IMO requirements. The Administration explained that MD would identify ships with high-risk of non-compliance with relevant regulations and carry out proactive inspections for those ships which had been detained overseas. It also prioritized the inspection for high-risk ships such as oil tankers. In accordance with international standards, MD would conduct random inspections for about 15% of non-Hong Kong-registered ships in Hong Kong waters and around 5% of Hong Kong ships.

18. The Subcommittee requested the Administration to provide information on the sampling rate adopted by port authorities in other jurisdictions to survey the ships. In a written response dated 6 May 2019 (LC Paper CB(4)840/18-19(01)), the Administration said that while MD did not have such information, in accordance with the various requirements of the IMO, merchant shipping vessels were required to be inspected or surveyed and certificated by the authorities of other flag states at least once every year to ensure that they were seaworthy.

Registration of ships in Hong Kong

19. In the light of the new IMO requirements, members were concerned whether Hong Kong ships would re-register under other jurisdictions to avoid being caught by the new requirements. In response, the Administration said that the Hong Kong Shipping Register was the fourth largest shipping register in the world. Hong Kong ships were among the best performers worldwide, with Port State Control detention rate of only around 0.8%, which was below the world's average of about 2.9%. In order to inform relevant stakeholders the latest IMO requirements, Merchant Shipping Information Notes would be issued to all Hong Kong ships before the subsidiary legislation implementing such requirements came into operation. The operators were well-informed of any new requirements, and the Administration was not aware of any case of re-registering of Hong Kong ship elsewhere due to the alignment of Hong Kong's local legislation with IMO requirements.

20. Members noted that a total of five Hong Kong ships were constructed or under construction in compliance with the Polar Code for operation in polar waters, and the construction of these ships had taken place outside Hong Kong.

Training of seafarers

21. Members enquired about the training of seafarers on board ships navigating in polar areas. The Administration replied that training records of seafarers were kept and managed by the shipping companies, and MD would conduct annual audit on the records.

Prescribed fee for the issue and alteration of the Polar Ship Certificates

22. Regarding the provisions of L.N. 44 of 2019, members noted that for the issue and alteration of the Polar Ship Certificates, the applicant would have to pay a prescribed fee. They enquired about the level of the prescribed fees. The Administration explained that the charging principles of Merchant Shipping (Fees) Regulations (Cap. 281F) would be applied to the subsidiary legislation.

Recommendation

23. The Subcommittee in general supports the five items of subsidiary legislation, and did not propose any amendment.

Advice sought

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

Council Business Division 4
Legislative Council Secretariat
22 May 2019

**Subcommittee on Subsidiary Legislation to
Implement the Latest Requirements under
Conventions of the International Maritime Organization**

Membership list

Chairman	Hon Frankie YICK Chi-ming, SBS, JP
Members	Hon WONG Kwok-kin, SBS, JP Hon Steven HO Chun-yin, BBS Dr Hon KWOK Ka-ki Hon Dennis KWOK Wing-hang Dr Hon Elizabeth QUAT, BBS, JP Hon Martin LIAO Cheung-kong, SBS, JP Ir Dr Hon LO Wai-kwok, SBS, MH, JP Hon Alvin YEUNG Hon Jeremy TAM Man-ho (Total : 10 members)
Clerk	Mr Ambrose LEUNG
Legal Adviser	Ms Clara TAM
Date	29 April 2019