

For discussion on  
25 March 2019

## **Legislative Council Panel on Economic Development**

### **Proposed Legislative Amendments to Implement the Latest Requirements of Maritime-Related International Conventions**

#### **PURPOSE**

This paper consults Members on three legislative proposals to implement requirements of three maritime-related international conventions concerning seafarers' welfare, liability limits on passenger carriers and the discharge of sewage into the Baltic Sea Special Area.

#### **LEGISLATIVE PROPOSALS**

##### **I. Maritime Labour Convention**

###### *Background*

2. The International Labour Organization ("ILO") regulates the working standards (e.g. training and qualification, hours of work and rest), health requirements (e.g. health and safety and accident prevention, on-board medical care) and employment conditions (e.g. payment of wages) for seafarers through the Maritime Labour Convention ("MLC"), which was adopted in 2006 and came into force globally in 2013. The ILO amends the MLC from time to time, with a view to enhancing protection of the rights of seafarers. In Hong Kong, the requirements are implemented via the Merchant Shipping (Seafarers) Ordinance (Cap. 478) and its subsidiary legislation.

###### *The 2016 Amendments and the 2018 Amendments to the MLC*

3. To enhance protection of seafarers' interest, the ILO adopted two amendments to the MLC in 2016 and 2018 respectively ("the 2016 Amendments" and "the 2018 Amendments"). The 2016 Amendments came into force globally

on 8 January 2019, while the 2018 Amendments are expected to enter into force globally on 26 December 2020<sup>1</sup>. We propose to incorporate the requirements of the 2016 Amendments and the 2018 Amendments into local legislation by amending the Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (Cap. 478AF). The requirements will apply to Hong Kong-registered ocean-going vessels (“OGVs”) of 500 gross tonnage or above wherever they may be, and non-Hong Kong OGVs of 500 gross tonnage or above within the waters of Hong Kong<sup>2</sup>.

4. The key requirements of the 2016 Amendments and the 2018 Amendments are summarised below -

- (a) ***Extending the validity of a Maritime Labour Certificate*** — Under the MLC, ships are required to keep on board a valid Maritime Labour Certificate (“ML Certificate”) to certify that they have complied with the MLC requirements. ML Certificates are issued upon the completion of a renewal inspection by flag administrations or their Recognised Organisations (“ROs”)<sup>3</sup>. However, due to the various administrative procedures involved in the issue of ML Certificates, ML Certificates may not be issued immediately upon the completion of renewal inspections. In this connection, one of the 2016 Amendments empowers flag administrations and their ROs to temporarily extend the validity of ML Certificates for up to five months to allow time for completing the necessary administrative procedures.
- (b) ***Safeguarding the interests of seafarers being held captive*** — To protect the interests of seafarers who are held captive during acts of piracy or armed robbery against the ships on which they are serving,

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<sup>1</sup> The 2018 Amendments are currently in their “Formal Disagreement Period” which will end on 26 June 2020. The ILO has declared that, unless more than 40 per cent of states which have ratified the MLC and which represent no less than 40 per cent of the ratifying states’ gross shipping tonnage express their disagreement by that date, the date of entry into force of the 2018 Amendments will be 26 December 2020.

<sup>2</sup> The requirements will not apply to—

- (a) fishing vessels;
- (b) ships of traditional build, including a dhow or a junk; or
- (c) warships or naval auxiliary.

<sup>3</sup> ROs are international bodies specialised in the technical areas of ships, such as ship construction, equipment, operation and surveys. At present, the Marine Department entrusts ROs through contractual agreements to carry out certain services including ships’ survey and certification.

the 2018 Amendments require that seafarers' employment agreements must continue to have effect during the entire period of captivity, regardless of whether their expiry date have passed, or whether the employer or employee has given notice to suspend or terminate them. Employers will also be required to ensure that wages and other entitlements payable under seafarers' employment agreements must continue to be paid, until the seafarers are released and duly repatriated<sup>4</sup>. If a seafarer dies in captivity, wages and such other entitlements up to the date of death must be paid.

## **II. The Athens Convention relating to the Carriage of Passengers and their Luggage by Sea**

### ***Background***

5. The International Maritime Organization (“IMO”) adopted the Athens Convention relating to the Carriage of Passengers and their Luggage by Sea (“the Athens Convention”) in 1974 to impose a regime of liability on passenger carriers against damages or losses suffered by passengers travelling by sea. The unit of measurement for monetary liability is Special Drawing Right (“SDR”), which is an interest-bearing international reserve asset created by the International Monetary Fund (“IMF”) in 1969. SDR is based on a basket of international currencies comprising US Dollar, Japanese Yen, the Euro, British Pound Sterling and Chinese Renminbi<sup>5</sup>.

6. The IMO made amendments to the Athens Convention through Protocols adopted in 1976, 1990 and 2002 (“the 1976 Protocol”, “the 1990 Protocol” and “the 2002 Protocol”) <sup>6</sup>. The 2002 Protocol came into force globally on 23 April 2014.

7. In Hong Kong, the requirements of the 1976 Protocol to the

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<sup>4</sup> To ensure that seafarers are able to return home, the MLC grants seafarers the right to be repatriated at no cost to themselves, and further sets out specific safeguards against violations of such right.

<sup>5</sup> The IMF publishes the daily conversion rates for SDR. For example, as of 1 March 2019, SDR 1 is approximately equivalent to US\$1.39 or HK\$10.94.

<sup>6</sup> The 1976 Protocol entered into force in 1989. The 1990 Protocol could only come into force globally after at least 10 states express their consent to be bound by it. However, only six states had ever expressed such consent and subsequently, the 1990 Protocol was effectively superseded by the 2002 Protocol.

Athens Convention are implemented via the Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434). The requirements therein apply to ships engaged in international voyages, as well as those engaged in regional carriage<sup>7</sup>.

**The 2002 Protocol**

8. We propose to incorporate the latest requirements of the 2002 Protocol into our local legislation. The key requirements include —

**(a) Increased limits of carriers’ liability** — The liability limits for the death or injury to passengers, and those for the losses or damages to their luggage carried on board passenger ships will be increased. We propose to reflect the latest liability limits in local legislation as follows—

<b>Liability limit per passenger (in SDR)</b>	
Current	Proposed
<i>Passengers’ death or injury</i>	
46 666	400 000
<i>Loss of, or damage to, cabin luggage</i>	
833	2 250
<i>Loss of, or damage to, vehicles or luggage carried inside vehicles</i>	
3 333	12 700
<i>Loss of, or damage to, other luggage</i>	
1 200	3 375

**(b) Compulsory insurance** — To ensure that carriers have the ability to compensate passengers upon their death or injuries, ships carrying more than 12 passengers will be required to purchase and maintain insurance or an equivalent level of financial security up to the corresponding strict liability limit. Flag States or their ROs will issue a certificate to certify that ships have complied with this requirement.

**(c) Right of direct action against insurers** — Passengers’ claims against carriers are often prolonged over time due to the complex processes

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<sup>7</sup> Regional carriage means the place of departure and the place of destination are respectively situated in Hong Kong and Macau, or Hong Kong and any port in the Mainland, or vice versa.

involved. To allow passengers to be compensated in good time, we propose to allow claims for compensation to be brought directly against the liability insurer for claims up to the strict liability limit.

### **III. International Convention for the Prevention of Pollution from Ships**

#### ***Background***

9. To protect the marine environment and minimise pollution from ship operations, the IMO adopted the International Convention for the Prevention of Pollution from Ships (“MARPOL”) in 1973. MARPOL came into force in 1983 and has six Annexes which set out regulations to prevent or control pollution caused by the discharge of different pollutants<sup>8</sup>. In Hong Kong, the requirements of MARPOL are implemented through the Merchant Shipping (Prevention and Control of Pollution) Ordinance (Cap. 413) and its subsidiary legislation.

#### ***Annex IV to MARPOL***

10. The IMO revised the requirements of Annex IV to MARPOL which regulates the prevention of pollution by sewage from ships. We propose to amend the Merchant Shipping (Prevention of Pollution by Sewage) Regulation (Cap. 413K) to reflect the latest requirements by prohibiting ocean-going passenger ships constructed on or after 1 June 2019 from discharging sewage into the Baltic Sea Special Area<sup>9</sup> unless they are fitted with sewage holding tanks or an approved sewage treatment system. As for existing ocean-going passenger ships, depending on which part of the Baltic Sea Special Area the ships are navigating in, they will be required to comply with the same requirement by

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<sup>8</sup> The Annexes to MARPOL govern various substances as follows:

- Annex I: Regulations for the prevention of pollution by oil;
- Annex II: Regulations for the control of pollution by noxious liquid substances in bulk;
- Annex III: Regulations for the prevention of pollution by harmful substances carried by sea in packaged form;
- Annex IV: Regulations for the prevention of pollution by sewage from ships;
- Annex V: Regulations for the prevention of pollution by garbage from ships; and
- Annex VI: Regulations for the prevention of air pollution from ships.

<sup>9</sup> Special Areas are sea areas where special methods for the prevention of pollution of the sea are required due to their special oceanographical and ecological characteristics, as well as maritime traffic patterns within those areas. In July 2011, the IMO designated the Baltic Sea as a special area for sewage from passenger ships. The decision entered into force on 1 January 2013.

1 June 2021 or 1 June 2023<sup>10</sup>.

## **CONSULTATION**

11. Regarding the legislative proposal to incorporate requirements of the 2016 Amendments and 2018 Amendments of the MLC, the Seafarers' Advisory Board of the Marine Department ("MD") was consulted in July 2018, while the Hong Kong Fleet Operation Advisory Committee of MD was consulted on the 2016 Amendments in November 2017 and the 2018 Amendments in January 2019. Members supported the legislative proposal.

12. In respect of the legislative proposal to incorporate the requirements of the 2002 Protocol to the Athens Convention, the Hong Kong Fleet Operation Advisory Committee and the High Speed Craft Consultative Committee of MD were consulted in January 2019. Members supported the legislative proposal.

13. The Hong Kong Fleet Operation Advisory Committee was consulted on the legislative proposal to implement latest requirements of Annex IV to MARPOL in November 2017. Members supported the legislative proposal.

## **ADVICE SOUGHT**

14. Members are invited to comment on the proposals. Subject to the drafting progress, we plan to introduce the legislative proposals into the Legislative Council by batches before the end of the 2019-2020 legislative year.

**Transport and Housing Bureau**  
**Marine Department**  
**March 2019**

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<sup>10</sup> The Baltic Sea Special Area is sub-divided into two parts, i.e. a western and an eastern part, along longitude 28°10'E. Existing ships navigating to the western part will be required to comply with the new requirement by 1 June 2021, while those navigating exclusively to the eastern part (and those which do not call at ports within the Baltic Sea Special Area at all) will be required to comply with the same by 1 June 2023.