

LEGISLATIVE COUNCIL BRIEF

Merchant Shipping (Seafarers) Ordinance (Cap. 478)

**Implementation of the Latest Requirements under
the Maritime Labour Convention, 2006
of the International Labour Organization**

INTRODUCTION

The Secretary for Transport and Housing (“STH”) has, under sections 86, 89, 96, 104 and 134 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478) (“the Ordinance”), made the Merchant Shipping (Seafarers) (Working and Living Conditions) (Amendment) Regulation 2019 (“the Working and Living Conditions Amendment Regulation”), at **Annex A**, and the Merchant Shipping (Seafarers) (Allotments) (Amendment) Regulation 2019 (“the Allotments Amendment Regulation”), at **Annex B**, to implement the latest requirements under the Maritime Labour Convention, 2006 (“the MLC”) of the International Labour Organization (“ILO”).

BACKGROUND

2. The ILO establishes 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) of seafarers through the MLC, which was adopted in 2006 and entered into force globally in 2013. The ILO has subsequently introduced amendments to the MLC, with a view to enhancing the protection of seafarers’ rights. In Hong Kong, requirements under the MLC are implemented via the Ordinance and its subsidiary legislation, with its major requirements implemented via the Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (Cap. 478AF) (“the Working and Living Conditions Regulation”).

LEGISLATIVE PROPOSAL

3. To further safeguard seafarers' interest, the ILO adopted two amendments to the MLC in 2016 and 2018 ("the 2016 Amendments" and "the 2018 Amendments"). The former entered into force globally on 8 January 2019, while the latter is expected to enter into force globally on 26 December 2020¹. We propose to incorporate the requirements of the 2016 Amendments and the 2018 Amendments into local legislation by amending the Working and Living Conditions Regulation and making a related amendment to the Merchant Shipping (Seafarers) (Allotments) Regulation (Cap. 478A) ("the Allotments Regulation").

4. The key requirements of the 2016 Amendments and the 2018 Amendments are summarised as follows —

- (a) *Extension of validity of Maritime Labour Certificates* — Under the MLC, ships of 500 gross tonnage or above are required to keep on board a valid Maritime Labour Certificate ("ML Certificate") to certify that they have complied with the requirements of the MLC. An ML Certificate is issued upon the completion of a renewal inspection by the relevant flag administration or its Recognised Organisations ("ROs")². However, due to the various administrative procedures involved, ML Certificates may not be issued immediately upon the completion of renewal inspections. To address this situation, in the 2016 Amendments, flag administrations and their ROs are allowed to extend the validity of ML Certificates for up to five months to allow time for completing the necessary administrative procedures.

¹ The 2018 Amendments are currently in their "Formal Disagreement Period" which will end on 26 June 2020. In accordance with the MLC, unless more than 40 per cent of ILO Members which have ratified the MLC ("ratifying Members") and which represent no less than 40 per cent of the gross tonnage of the ships of the ratifying Members formally express disagreement by that date, the date of entry into force of the 2018 Amendments will be 26 December 2020.

Both the 2016 Amendments and the 2018 Amendments will need to be extended to Hong Kong by the Central People's Government for them to apply to Hong Kong. As such, the commencement date of the relevant amendment regulations will be separately appointed by STH once the date of such extension is confirmed in due course.

² ROs are international bodies specialised in the technical areas of ships, such as ship construction, equipment, operation and surveys. In Hong Kong, the Marine Department entrusts ROs through contractual agreements to carry out certain services including ships' survey and certification.

- (b) *Safeguards of 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, the 2018 Amendments require that seafarers' employment agreements must continue to have effect during the entire period of captivity, regardless of whether their expiry dates have passed, or whether the employer or employee has given notice to suspend or terminate the agreements. Employers will also be required to ensure that wages and other entitlements under the seafarers' employment agreements must continue to be paid, until the seafarers are released and duly repatriated³. If a seafarer dies in captivity, such wages and other entitlements up to the date of death must be paid.

THE AMENDMENT REGULATIONS

Merchant Shipping (Seafarers) (Working and Living Conditions) (Amendment) Regulation 2019

5. The Working and Living Conditions Amendment Regulation amends the Working and Living Conditions Regulation to give effect to the 2016 Amendments and the 2018 Amendments.

Related Amendment

Merchant Shipping (Seafarers) (Allotments) (Amendment) Regulation 2019

6. In relation to the 2018 Amendments, the Allotments Amendment Regulation amends the Allotments Regulation to make clear that, for the purposes of determining whether a seafarer has earned the wages to be allotted, such wages earned by a seafarer include any wages required to be paid to a seafarer while he is in captivity in accordance with the new section 55A of the Working and Living Conditions Regulation.

³ 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.

Application of the Direct Reference Approach

7. The requirements of the MLC are technical in nature and are updated from time to time by the ILO. In line with the established practice in incorporating the requirements of other marine-related international conventions into our local legislation, we have adopted a “Direct Reference Approach”⁴ in the amended regulations wherever applicable and appropriate to allow our local legislation to be kept up-to-date as far as practicable.

LEGISLATIVE TIMETABLE

8. The Amendment Regulations will be gazetted on 29 November 2019 and introduced into the Legislative Council for negative vetting on 4 December 2019.

IMPLICATIONS OF THE PROPOSAL

9. The proposal is in conformity with the Basic Law, including provisions concerning human rights. It will not affect the current binding effect of the Ordinance and subsidiary legislation thereunder. The proposal has no financial, civil service, economic, productivity, environmental, sustainability, gender or family implications.

PUBLIC CONSULTATION

10. The Hong Kong Fleet Operation Advisory Committee and the Seafarers’ Advisory Board of the Marine Department were consulted in November 2017 and July 2018 respectively on the proposal to implement the 2016 Amendments. As regards the proposal to implement the 2018 Amendments, they were consulted in January 2019 and July 2018 respectively. Members of both advisory bodies supported the proposals.

⁴ Section 134(3A) of the Ordinance stipulates that any regulations made under the Ordinance for giving effect to provisions of international agreements that are applicable to Hong Kong and amended from time to time may set out or refer directly to those provisions.

11. The Legislative Council Panel on Economic Development was consulted on the proposal to implement the 2016 Amendments and the 2018 Amendments in March 2019. Members supported the proposal.

PUBLICITY

12. A press release will be issued on 29 November 2019. A spokesperson will be available to handle press enquiries.

ENQUIRIES

13. Any enquiries on this brief can be addressed to Ms Louisa YAN, Principal Assistant Secretary for Transport and Housing (Transport) (Tel: 3509 8162) or Mr CHOI Chi-chuen, Assistant Director of Marine (Multi-lateral Policy) (Tel: 2852 4408).

Transport and Housing Bureau
Marine Department
November 2019

Merchant Shipping (Seafarers) (Working and Living Conditions) (Amendment) Regulation 2019

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Merchant Shipping (Seafarers) (Working and Living Conditions) (Amendment) Regulation 2019

(Made by the Secretary for Transport and Housing under sections 86, 89, 96, 104 and 134 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

1. Commencement

This Regulation comes into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette.

2. Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation amended

The Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (Cap. 478 sub. leg. AF) is amended as set out in sections 3 to 11.

3. Section 2 amended (interpretation)

Section 2(1)—

Add in alphabetical order

“*armed robbery against ships* (武裝搶劫船舶) has the meaning given by Standard A2.1 of the ML Convention;
piracy (海盜) has the meaning given by Standard A2.1 of the ML Convention;”.

4. Part 2, Division 5A added

Part 2, after Division 5—

Add

“Division 5A—Seafarers’ Employment Agreements in Case of Piracy or Armed Robbery against Ships

16A. Seafarers’ employment agreements remain effective in case of piracy or armed robbery against ships

(1) Subsection (2) applies if—

- (a) a seafarer is employed to work on board a ship; and
- (b) the seafarer is held captive on or off the ship as a result of an act of piracy or armed robbery against ships.

(2) The seafarer’s employment agreement continues to have effect during the period of captivity, regardless of whether—

- (a) the date fixed for the agreement’s expiry has passed; or
- (b) either party to the agreement has given notice to suspend or terminate the agreement.”.

5. Section 25 amended (sufficient number of seafarers to ensure safety of ship etc.)

Section 25(2)—

Repeal

“(Minimum Safe Manning Certificate)”

Substitute

“(Ship’s Manning)”.

6. Section 55A added

After section 55—

Add

“55A. Must pay wages despite capture following piracy or armed robbery against ships

- (1) This section applies if—
 - (a) a seafarer is employed to work on board a ship; and
 - (b) the seafarer is held captive on or off the ship as a result of an act of piracy or armed robbery against ships.
- (2) Without limiting section 55, wages and other entitlements under the employment agreement, including the remittance of any allotments as provided in paragraph 4 of Standard A2.2 of the ML Convention, must continue to be paid and given to the seafarer by the seafarer’s employer during the periods specified in subsection (3), regardless of whether—
 - (a) the date fixed for the agreement’s expiry has passed; or
 - (b) either party to the agreement has given notice to suspend or terminate the agreement.
- (3) The following periods are specified for subsection (2)—
 - (a) the period from the start of the captivity until—
 - (i) the seafarer’s release; or
 - (ii) if the seafarer dies while in captivity—the seafarer’s date of death; and
 - (b) the period from the seafarer’s release until the seafarer is duly repatriated in accordance with Standard A2.5.1 of the ML Convention.”.

7. Section 69 amended (Authority may issue maritime labour certificates)

Section 69(2)—

Repeal

“section 75”

Substitute

“sections 72A and 75”.

8. Section 72 amended (renewal of maritime labour certificate)

Section 72(2)—

Repeal

“section 75”

Substitute

“sections 72A and 75”.

9. Part 3, Division 3, Subdivision 2A added

Part 3, Division 3, after Subdivision 2—

Add

“Subdivision 2A—Temporary Extension of Current Maritime Labour Certificate

72A. Temporary extension of current maritime labour certificate

- (1) This section applies to a ship if the Authority is satisfied that—
 - (a) an inspection of the ship has been carried out by a Government surveyor before the date of expiry of

- the current maritime labour certificate issued in respect of the ship;
- (b) based on the result of the inspection, all the Part 2 requirements applicable to the ship are complied with; and
- (c) on or before the date of expiry of the current maritime labour certificate, a new maritime labour certificate cannot be—
- (i) issued in respect of the ship; and
- (ii) made available on board the ship.
- (2) The Authority may extend the validity period of the current maritime labour certificate issued in respect of the ship by making an endorsement to that effect on the current certificate.
- (3) The period extended under subsection (2) must be specified in the endorsement, which must not exceed 5 months from the date of expiry of the current maritime labour certificate.”.

10. Section 111 amended (Authority may recognize organizations)

After section 111(2)(a)(i)—

Add

“(ia) to extend a validity period under section 72A;”.

11. Schedule 4 amended (staffing requirements for catering department)


Schedule 4, section 1—

Repeal

“(Minimum Safe Manning Certificate)”

Substitute

“(Ship’s Manning)”.



Secretary for Transport and Housing

26 November 2019

Explanatory Note

The Maritime Labour Convention, 2006, as amended (*ML Convention*) regulates and protects the working and employment conditions, as well as other entitlements of seafarers. Certain amendments made to the ML Convention in 2016 and 2018 are to be implemented in Hong Kong by amending the Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (Cap. 478 sub. leg. AF) (*principal Regulation*).

2. This Regulation amends the principal Regulation to—
 - (a) provide that a seafarer's employment agreement and his or her wages and other entitlements under the agreement must not be affected by the seafarer's being held captive as a result of an act of piracy or armed robbery against ships;
 - (b) provide that the validity period of a ship's current maritime labour certificate may be extended temporarily before the issue of a new maritime labour certificate in respect of the ship; and
 - (c) make consequential amendments to the title of the Merchant Shipping (Safety) (Minimum Safe Manning Certificate) Regulation (Cap. 369 sub. leg. AS).

**Merchant Shipping (Seafarers) (Allotments)
(Amendment) Regulation 2019**

(Made by the Secretary for Transport and Housing under sections 89 and 96 of the Merchant Shipping (Seafarers) Ordinance (Cap. 478))

1. Commencement

This Regulation comes into operation on a day to be appointed by the Secretary for Transport and Housing by notice published in the Gazette.

2. Merchant Shipping (Seafarers) (Allotments) Regulation amended

The Merchant Shipping (Seafarers) (Allotments) Regulation (Cap. 478 sub. leg. A) is amended as set out in section 3.

3. Section 6 amended (times and intervals of payments under allotment notes)

(1) Section 6—

Renumber the section as section 6(1).

(2) Section 6(1)(a), English text—

Repeal

“shall” (wherever appearing)

Substitute

“must”.

(3) Section 6(1)(b), English text—

Repeal

“shall be”

Substitute

“is”.

(4) After section 6(1)—

Add

“(2) For the purposes of subsection (1)(b), wages earned by the seafarer include any wages required to be paid to the seafarer under section 55A of the Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (Cap. 478 sub. leg. AF).”.



Secretary for Transport and Housing

26 November 2019

Explanatory Note

The Maritime Labour Convention, 2006, as amended (*ML Convention*) regulates and protects the working and employment conditions, as well as other entitlements of the seafarers. Certain amendments made to the ML Convention in 2018 are to be implemented in Hong Kong by amending the Merchant Shipping (Seafarers) (Working and Living Conditions) Regulation (Cap. 478 sub. leg. AF) (*Cap. 478AF*).

2. In conjunction with the amendments to Cap. 478AF, this Regulation amends section 6 of the Merchant Shipping (Seafarers) (Allotments) Regulation (Cap. 478 sub. leg. A) (*Cap. 478A*).
3. Cap. 478A is amended to make clear that, for the purposes of its section 6 (times and intervals of payments under allotment notes), wages earned by a seafarer include wages required to be paid under the new section 55A of Cap. 478AF.