

For discussion on
19 April 2016

Legislative Council Panel on Economic Development
Incorporating in Local Legislation the Latest Standards of the
International Maritime Organisation

Merchant Shipping (Safety) Ordinance (Cap. 369)
and
Merchant Shipping (Seafarers) Ordinance (Cap. 478)

Purpose

This paper seeks Members' endorsement of the proposed legislative amendments to incorporate in local legislation the requirements set out in the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, ("STCW Convention") and the International Convention for the Safety of Life at Sea ("SOLAS") adopted by the International Maritime Organisation ("IMO").

Background

STCW Convention

2. STCW Convention aims at promoting safety of life and property at sea, as well as protecting the marine environment by establishing international standards of training, certification and watchkeeping for seafarers. It was adopted by IMO in 1978 and entered into force in 1984. The requirements of the STCW Convention are implemented in Hong Kong through the Merchant Shipping (Seafarers) Ordinance (Cap. 478) and its subsidiary legislation. To keep training standards in tandem with new technological and operational requirements, IMO adopted a major revision to the STCW Convention in 2010, commonly known as the "Manila Amendments". The

Manila Amendments entered into force on 1 January 2012, with a five-year transitional period ending on 1 January 2017 by which seafarers must be certified and trained according to the new standards. In view of the scale of revisions involved, we need to make reference to overseas experience to ensure that the new requirements will be reflected accurately in local laws. This process has taken more time than envisaged. Failure to incorporate these latest requirements into local legislation may risk Hong Kong being removed from the White List¹.

SOLAS

3. SOLAS, which governs the standards for the construction, equipment and operation of ships to ensure maritime safety, was adopted by IMO in 1974 and entered into force in 1980. SOLAS is implemented in Hong Kong through the Merchant Shipping (Safety) Ordinance (Cap. 369) and its subsidiary legislation. Different aspects of maritime safety are covered under different chapters of SOLAS², and the requirements therein are incorporated into our local legislation as necessary. This amendment exercise focuses on carriage of cargoes (Chapter VI) and safety measures for high-speed craft (Chapter X).

¹ The White List consists of parties deemed by IMO to have given full and complete effect to the STCW Convention. The timely implementation of the Manila Amendments by 1 January 2017 would prevent Hong Kong flag ships from being targeted by port state controls, and ensure that seafarers holding certificates issued by the Marine Department (MD) are accepted by other flag states for service on their ships.

² SOLAS covers different aspects of maritime safety, as follows —

- Chapter I: survey of ships and issue of certificates;
- Chapter II-1: construction of ships covering subdivision and stability, machinery and electrical installations;
- Chapter II-2: fire protection, fire detection and fire extinction;
- Chapter III: life-saving appliances and arrangements;
- Chapter IV: radiocommunications;
- Chapter V: safety of navigation;
- Chapter VI: carriage of cargoes ;
- Chapter VII: carriage of dangerous goods;
- Chapter VIII: nuclear ships;
- Chapter IX: management for the safe operation of ships;
- Chapter X: safety measures for high-speed craft;
- Chapter XI: special measures to enhance maritime safety and security;
- Chapter XII: additional safety measures for bulk carriers; and
- Chapter XIII: verification of compliance.

There is a new Chapter XIV on safety measures for ships operating in polar waters, which will take effect from 1 January 2017.

Proposed Amendments

STCW Convention

4. The Manila Amendments aim at updating the training and certification requirements for seafarers so as to enhance safety during voyage and help them cope with new technologies on board, as well as to avert seafarer misconducts, such as alcohol and drug abuse. To implement the Manila Amendments, we need to amend 12 regulations under the Merchant Shipping (Seafarers) Ordinance (Cap. 478) and the Administrative Appeals Board Ordinance (Cap. 442) at **Annex**. Major amendments are highlighted below —

- (a) ***New grade of certificates to reflect enhanced proficiency requirements*** — In the light of increasing complexity of shipboard tasks, seafarers will be required to obtain different certificates of proficiency to discharge the corresponding duties. These certificates of proficiency are a new grade and have a higher standard of requirements than the current certificates of competency; they will be required for the discharge of the more complex shipboard tasks.
- (b) ***Criminalising the use of fake certificates*** — Under the current Merchant Shipping (Seafarers) (Certification of Officers) Regulation (Cap. 478J), providing false information when applying for certificates is a criminal offence. As a further measure to prevent fraud, using fake certificates will also be made a criminal offence under Cap. 478J.
- (c) ***Appeal mechanism*** — Under the current Administrative Appeals Board Ordinance (Cap. 442), the administrative appeal mechanism is restricted only to the issuance of some certificates. The proposed amendment will provide a right to appeal administratively under Cap. 442 for seafarers who are refused for issuance of any certificates.

- (d) ***Enhanced mandatory training for seafarers working on different types of ships*** — In view of the changes in seafaring practices, various seafarer trainings currently provided will be enhanced, mandated and elaborated in our laws while some new types of trainings will be added. Seafarers working on passenger ships will be required to undergo training on crowd management, crisis management, passenger safety, cargo safety and hull integrity. Seafarers working on ocean-going ships will be required to undergo enhanced security training to cope with possible pirate attacks. Seafarers working on different types of tankers including oil tankers, chemical tankers and liquefied gas tankers are required to undergo specified training to protect seafarers' safety and the marine environment.
- (c) ***Specify alcohol limits in blood or breath*** — Currently under Merchant Shipping (Seafarers) (Disciplinary Offences on Board Ships) Regulation (Cap. 478N), being under the influence of drink to such an extent that the seafarer behaves in a disorderly manner or is unfit for duty is a disciplinary offence. To provide an objective yardstick, the proposed amendments will specify the alcohol limits in blood or breath of seafarers. Breach of this requirement would be a criminal or disciplinary offence³.

SOLAS

Carriage of Cargoes

5. Requirements for stowage and securing of cargoes and oil fuels under SOLAS is implemented in Hong Kong through the Merchant Shipping (Safety) (Carriage of Cargoes) Regulation (Cap. 369AV). Such requirements are updated from time to time to cope with the changing patterns for carrying cargoes and to reflect new safety measures. Major amendments are summarised as follows —

³ Ratings in breach of this requirement will be subject to disciplinary offence while officers will be subject to criminal offence.

- (a) ***Verifying the gross mass of cargoes (VGM)*** — To prevent collapse of container stacks during voyage, shippers will be required to verify the gross mass of cargoes before loading the packed containers on board. This can be done by weighing the packed container as a whole, or adding up the constituent packages, cargoes and loads.
- (b) ***Banning certain dangerous operations*** — To enhance safety of ship and seafarers on board, the proposed amendments will prohibit blending liquid cargoes or operations on voyages that may generate uncontrollable chemical reactions.
- (c) ***Extending the regulatory scope to cover ships carrying oil fuels*** — The proposed amendments will require ships carrying oil fuels to show on board a material safety data sheet so that seafarers have clear information on the potential health and environmental impacts of the oil cargo or oil fuel. To reflect the extended regulatory scope, the Merchant Shipping (Safety) (Carriage of Cargoes) Regulation (Cap. 369AV) will be renamed to Merchant Shipping (Safety) (Carriage of Cargoes and Oil Fuel) Regulation.
- (d) ***Regulating carriage of solid bulk cargo***⁴ — As carriage of solid bulk cargo can pose specific danger to ships⁵, IMO has issued the International Maritime Solid Bulk Cargoes Code (“IMSBC Code”) under SOLAS. At present, there is no corresponding local legislation. We propose to make a new regulation under the Merchant Shipping (Safety) Ordinance to prescribe the procedures for shipment of dangerous solid bulk cargoes⁶ and mandate precautions for loading, trimming, carriage and discharge of solid bulk cargoes.

⁴ Solid bulk cargoes are cargoes in a loose form without packaging.

⁵ During voyage, chemical reactions, loss of stability or improper distribution of such cargo can endanger safety.

⁶ For example, provision of detailed information as required by section 4 of the IMSBC Code.

Safety Measures for High Speed Craft

6. The Merchant Shipping (Safety) (High Speed Craft) Regulation (Cap. 369AW) governs the construction, equipment, operational and maintenance matters of high speed craft pursuant to IMO's 1994 International Code of Safety for High Speed Craft⁵. To cope with the rapidly developing construction practices of high speed craft, IMO has adopted the 2000 International Code of Safety for High Speed Craft to regulate high speed craft built on or after 1 July 2002. To align with these latest requirements, we propose to introduce the following requirements for high speed craft constructed on or after the commencement date of our amendment regulation⁶ —

- (a) incorporating more stringent fire-safety requirements for fire protection materials and equipment installed on board;
- (b) upgrading construction standards for anchoring equipment on the deck;
- (c) requiring the display of clearer emergency signs on the high speed craft; and
- (d) introducing higher standards for life-saving appliances provided on board.

Implications for the Shipping Industry

STCW Convention

7. The proposed legislative amendments are necessary to ensure that seafarers working on Hong Kong registered ships are certificated before 1 January 2017 to discharge shipboard duties in accordance with the Manila

⁷ SOLAS makes the International Codes of Safety for High Speed Craft mandatory.

⁸ Existing high speed craft will continue to be subject to the 1994 International Code of Safety for High Speed Craft (which is also updated from time to time to ensure their safety). The co-existence of the two sets of requirements is a common international practice.

Amendments as mentioned in Paragraph 4(a) above. It is estimated that about 180 seafarers in total would require new certificates. The Marine Department and other recognised institutions are providing the necessary short training. The legislative amendments will give MD the legal authority to issue new certificates and recognise those issued by other governments.

Carriage of Cargoes

8. Ocean-going vessels should be in compliance with the requirements on carriage of cargoes in paragraph 5(b) to (d) as the requirements apply globally and the vessels need to visit foreign ports. We do not anticipate compliance issues from them.

9. The VGM requirement in Paragraph 5(a) above will come into operation globally from 1 July 2016. As transshipment containers will have their weight verified at their ports of origin, they do not require re-verification in Hong Kong. On the basis of Hong Kong ports' throughput and the proportion of transshipment, it is estimated that about 4 600 twenty-foot equivalent units (TEUs) will be subject to the new requirement daily. To facilitate the industry to meet the new requirements, MD will brief stakeholders (including shippers, freight forwarders, carriers, terminal operators, authorised weigh-scale operators, etc.) on the practical arrangements and procedures through townhall meetings in April. A trial run on workflow and documentation involving MD, shippers and terminal operators will be conducted on 30 May. The procedures will be fine-tuned in light of feedback to ensure smooth implementation on 1 July 2016.

Consultation

10. The Shipping Consultative Committee, the High Speed Craft Consultative Committee and the Port Operation Committee have been consulted on the legislative proposals. Some Port Operation Committee members are concerned about the procedures and actual implementation arrangements of the new VGM requirements. MD will implement measures to acquaint the trade with the compliance procedures (paragraph 9 refers).

Legislative Timetable

11. We aim at tabling the Merchant Shipping (Safety) (Carriage of Cargoes and Oil Fuel) (Amendment) Regulation at the Legislative Council in May 2016 to ensure the timely implementation of the VGM requirement under SOLAS. The Merchant Shipping (Safety) (High Speed Craft) (Amendment) Regulation and the new Merchant Shipping (Safety) (IMSBC Code) Regulation will be tabled at the same time.

12. The set of 12 regulations for the implementation of STCW Convention (See **Annex**) will be introduced into the Legislative Council in October 2016 to ensure that the Manila Amendments are implemented in Hong Kong before 1 January 2017 when the transitional period ends.

Advice Sought

13. Members are invited to endorse the above proposals. Subject to Members' support, we will introduce the regulations into the Legislative Council according to the legislative timetable set out in paragraph 11-12.

Transport and Housing Bureau
Marine Department
April 2016

**List of 12 Regulations under the Merchant Shipping (Seafarers) Ordinance
and the Administrative Appeals Board Ordinance to be amended**

Chapter	Regulation	Major Amendments
Cap. 478J	Merchant Shipping (Seafarers) (Certification of Officers) Regulation	<ul style="list-style-type: none"> Adding a new grade of “Electro-technical Officer” and the relevant qualification and certification requirements
Cap. 478K	Merchant Shipping (Seafarers) (Tankers-Officers and Ratings) Regulation	<ul style="list-style-type: none"> Updating training and certification requirements for seafarers on board different types of tankers including oil tankers, chemical tankers and liquefied gas tankers
Cap.478N	Merchant Shipping (Seafarers) (Disciplinary Offences on board Ships) Regulation	<ul style="list-style-type: none"> Specifying a limit of not greater than 0.05% blood alcohol level or 0.25mg/l alcohol in the breath to prevent alcohol abuse by seafarers
Cap.478T	Merchant Shipping (Seafarers) (Certification and Watchkeeping) Regulation	<ul style="list-style-type: none"> Updating the duties of chief engineer officers and masters Stipulating the procedures in dealing with deficient certificates
Cap.478V	Merchant Shipping (Seafarers) (Engine Room Watch Ratings) Regulation	<ul style="list-style-type: none"> Enabling the issuance of the Engine Room Watch Rating Certificates
Cap.478W	Merchant Shipping (Seafarers) (Navigational Watch Ratings) Regulation	<ul style="list-style-type: none"> Enabling the issuance of the Navigational Watch Rating Certificates

Chapter	Regulation	Major Amendments
Cap.478Y	Merchant Shipping (Seafarers) (Certificates of Competency as A.B.) Rules	<ul style="list-style-type: none"> Stipulating the training and certification requirements for the new seafarer grades of “Able Seafarer Deck” and “Able Seafarer Engine”
Cap.478Z	Merchant Shipping (Seafarers) (Certificates of Proficiency in Survival Craft, Rescue Boats and Fast Rescue Boats) Rules	<ul style="list-style-type: none"> Merging Cap. 478Z and Cap. 478AC Stipulating the requirements for seafarer training on safety, security and designated duties training in Cap. 478AC
Cap. 478AC	Merchant Shipping (Seafarers) (Safety Training) Regulation	
Cap. 478AB	Merchant Shipping (Seafarers) (Fees) Regulation	<ul style="list-style-type: none"> Enabling MD to charge fees for issuing the certificates to seafarers
Cap. 478AD	Merchant Shipping (Seafarers) (Ro-Ro Passenger Ships-Training) Regulation	<ul style="list-style-type: none"> Merging Cap. 478AD and Cap. 478AE Stipulating the training requirements for seafarers working on passenger ships including crowd management, crisis management, passenger safety, cargo safety and hull integrity in Cap. 478AD
Cap. 478AE	Merchant Shipping (Seafarers) (Passengers Ships other than Ro-Ro Passenger Ships-Training) Regulation	
Cap. 442	Administrative Appeals Board Ordinance	<ul style="list-style-type: none"> Allowing seafarers who are refused the issuance of certificates to appeal administratively