

( **FINALIZED** )

**NOTES OF THE MEETING OF THE  
SEAFARERS' ADVISORY BOARD ("SAB")**

**DATE** : 11 February 2009 (Wednesday)  
**TIME** : 2:30 p.m.  
**VENUE** : Conference Room A, Marine Department Headquarters

**Present**

Mr. R. F. TUPPER (Chairman)	Director of Marine <i>(the Seafarers' Authority)</i>
Mr. NG Kwok-keung, Byron	Assistant Commissioner for Labour (Labour Relations)
Captain Willy CHANG Tai-tai	Hong Kong Shipowners Association
Captain Biraj TRACY	Hong Kong Shipowners Association
Captain. KUNG Wing-kai	Merchant Navy Officers' Guild – Hong Kong
Mr. SHAU Shui-tak	Hong Kong Seamen's Union
Mr. LEE Kwok-keung	Amalgamated of Union of Seafarers – Hong Kong
Mr. David NG (Secretary)	Executive Officer/Shipping and Multi-lateral Policy Divisions

**Absent with apologies**

Mr. Louis PANG	Employers' Federation of Hong Kong
Mr. K. F. CHICK	General Manager/Shipping Registry & Seafarers

**In attendance**

Mr. TING Kam-yuen	Hong Kong Seamen's Union
Mr. K. L. LEE	Assistant Director / Shipping
Mr. Y. M. CHENG	Chief, Maritime Policy
Mr. S. W. CHEUNG	Chief Assistant Registrar / Ship & Seafarers
Mr. W. H. HO	Assistant Ship Master (1)/Seafarers Registration
Mr. S. M. YU	Assistant Ship Master (2)/Seafarers Registration

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**Opening remarks**

**The Chairman** welcomed all to the meeting.

2. **The Chairman** proposed and **Members** agreed to the agenda distributed earlier for the meeting.

**Agenda Item 1: Declaration of Interest**

3. **The Chairman** briefed the meeting on the need for the Board to adopt a system for Members to declare their interests when appropriate having regarded the Administration's existing policy. He told Members that they should declare their interest whenever they perceived a potential conflict of interest in a matter placed before the Board. **Members** noted that it was the responsibility of the member to judge and to decide if the situations warrant a declaration, and to seek a ruling from the Chairman in case of doubt.

**Agenda Item 2: Report on the works completed by the Tripartite Working Group ("TWG") for the implementation of Maritime Labour Convention 2006 in Hong Kong Special Administration Region ("HKSAR").**

4. **Mr. CHENG** briefed Members on the background and the key features of the Maritime Labour Convention 2006 ("MLC 2006"). He also presented the key issues and the summary of the outcome of the discussion covered in the six meetings convened by the Tripartite Working Group ("TWG") during the period from 23 February 2007 to 29 August 2008.

5. **Members** also noted that the membership of the TWG comprised 4 representatives from shipowners (HKSOA, COSCO, OOCL, and Univan); 4 members representing seafarers' associations, namely Amalgamated of Union of Seafarers – Hong Kong ("AUSHK"); Hong Kong Seamen's Union ("HKSU"); and Merchant Navy Officers' Guild – Hong Kong ("MNOGHK") and 4 government representatives.

6. The SAB noted that both the seafarers' and the shipowners' representatives indicated in the first meeting of the TWG held on 23.2.2007 of their general support to the implementation of the MLC in the Hong Kong Special Administrative Region ("HKSAR") of the People's Republic of China (PRC) (para 7 of the confirmed notes of the TWG1).

**Agenda Item 3: Deliberation on SAB Paper No. 1/2008 “Maritime Labour Convention 2006 – Implementation in HKSAR”**

7. As SAB Paper No. 1/2008 had been circulated to all Members in mid-December 2008 for deliberation in their respective organizations and the TWG had worked effectively to a tight timeline to cover all aspects of the MLC 2006, **the Chairman** proposed and the meeting agreed that due respect should be given to the work done by the TWG so far such that the meeting should avoid re-opening issues already resolved unless there were sufficient grounds to suggest otherwise.

**Article III Fundamental Rights and Principles**

8. **Mr. K. K. LEE** of AUSHK considered the issue on the seafarers’ right of collective bargaining was not yet resolved in the TWG. In response to the enquiry from Mr. K. K. LEE of AUSHK on para (a) in Article III, in particular provision of local legislation with respect to collective bargaining, **the Chairman** invited Mr. NG of the Labour Department (“LD”) to elaborate on the Administration’s stance on the issue.

9. Mr. NG of LD explained to Members that the ILO Convention on Collective Bargaining had already been implemented in Hong Kong, but the convention did not require mandatory legislation for collective bargaining. Also, there was no consensus in the society whether legislation of collective bargaining was the best measure to promote employee’s welfare in Hong Kong. As such, the Administration would continue to promote voluntary collective bargaining between employers and employees.

10. **The Chairman** added that Marine Department (“MD”) would stand ready if both employers and employees asked for the department’s involvement in the discussion of collective bargaining agreement towards the directions of MLC 2006.

11. After deliberation, **Members** agreed that the TWG would be an appropriate platform for further discussion on the implementation of Article III whereas the SAB endorsed the fundamental rights and principles of the article.

***Article IV Seafarers' Employment and Social Rights***

12. In response to the enquiries of **Captain KUNG of MNOGHK** on the issue raised by HKSOA with regard to Article IV paragraph 5 of MLC 2006, **Mr. K. L. LEE** of MD explained that paras 1 – 4 of the aforesaid article defined the social rights of seafarers and para 5 stipulated that the requirements of Article IV “Seafarers’ Employment and Social Rights” could be implemented through national laws or regulations, applicable collective agreement or other measures or in practice. As such, Member States of MLC 2006 could decide which option was the best means for the implementation of individual provisions as long as the social rights of seafarer were safeguarded.

***Rest Period***

13. **Mr. SHAU** of HKSU expressed concerns on the result of the TWG5 regarding the exclusion of shipmasters from the hours of work requirements in MLC 2006. **Mr. CHENG** replied that the proposal to include the shipmasters in the hours of work requirement of MLC 2006 was also extensively discussed in the ILO Conferences to no avail. In addition, shipmaster could log complaint in accordance with the prevailing rules and regulations under MLC 2006 if he considered he was ill treated. **Captain TRACY** of HKSOA opined that it would be impracticable if the master was included in the rest day compliance list from the resource aspect. Moreover, the effective implementation of ISM Code and other quality assurance measures on board would prevent undue fatigues of all personnel on board, including the shipmaster.

14. **The Chairman** told Members that the shipmaster was the ultimate officer-in-charge and was held responsible for the effective performance of his crews. With the effective implementation of the ISM Code and the SMS on board, the shipmaster should be in a position to determine whether personnel on board had worked beyond fatigue level that would jeopardize the safe operation of the vessel.

***Complaint Handling - Inspection and Investigation***

15. In response to the proposal for the participation of representatives of seafarers in inspection and investigation on board for purpose of the implementation of MLC 2006, **Members** noted that Mr. K. K. LEE of AUSHK had raised the issue in the first TWG meeting held on 23.2.2007. Also, it was noted in the TWG meeting that “the new legislation would not in any way refer to or account for this activity mentioned by Mr. K. K. LEE” (para 14 of the confirmed notes of meeting in Appendix IX of the SAB Paper No. 1/2008). **Captain TRACY** of HKSOA said that safety inspection must be conducted by qualified independent parties. **Mr. K. L. LEE** informed the meeting that the implementation of MLC 2006 on ships would be subject to inspection by both Flag State and Port State Control regimes. Hong Kong as the Flag Administration would authorize the Classification Societies to certify a Hong Kong registered vessel’s compliance to the convention. In the capacity as a Port State and a member of the Tokyo MOU, MD’s PSC officers would inspect other ships in Hong Kong waters upon Hong Kong has ratified the convention.

16. **The Chairman** told Members that both Paris MOU and Tokyo MOU had started discussion on how to implement MLC 2006 through PSC inspections. It was envisaged that both MOUs would recognize IACS inspection standards on the MLC 2006. In the meantime, the Administration would discuss with other Tokyo MOU members with a view to agreeing on a common approach on PSC inspection for the implementation of MLC 2006 in Asia. He added that the Administration was still open to any options of PSC inspection to implement MLC 2006 as long as it could ensure experienced persons with proper training conducted the inspections professionally and objectively.

***Employment of Seafarers***

17. In response to the enquiry of Mr. K. K. LEE of AUSHK on the decline in the number of local sea-going seafarers, and the Administration’s policy to promote employment of local seafarers, **the Chairman** told Members that he would also like to see more training and employment opportunities in the shipping industry for Hong Kong young people. He added that the

Administration was supportive and willing to provide financial support for the training of sea cadets through the Sea-going Training Incentive Scheme, through programmes for Class II/III holders to study towards Class I certification; and by setting up schemes to provide financial assistances to undergraduates and post-graduates to further their education in maritime and logistic management. In addition, MD had pushed strongly in the Maritime Industry Council (“MIC”) ahead the recruitment and training of local residents to join the maritime industry at all levels, and the Human Resources Task Force of the MIC was looking into the matter already. **Captain TRACY** of HKSOA added that Hong Kong also encountered difficulties like other countries in attracting young people to join seafaring careers.

18. **Mr. K. K. LEE** of AUSHK said that there was no guarantee of employment for local seafarers who had completed training under such programmes. In response, **Captain TRACY** of HKSOA said that it was also in the interest of shipowners to facilitate sustainable development of the maritime industry at all levels. However, it would be impracticable to restrict employment of seafarers to a particular nationality having regard to the diversity of the sea-going needs and competition from other countries for the limited pool of well-trained seafarers.

***Employment Compensations for Hong Kong Seafarers Serving on non-Hong Kong Vessels***

19. Both **Mr. SHAU** of HKSU and **Captain KUNG** of MNOGHK inquired whether the Administration could undertake to protect Hong Kong seafarers working on non-Hong Kong registered vessels. **Mr. CHENG** told Members that Hong Kong seafarers serving on non-Hong Kong vessels could not enjoy extraterritorial rights as the Employee Compensation Ordinance (ECO) did not apply to Hong Kong residents working on board foreign vessels even though their flag State were Member States of ILO that rectified MLC 2006.

20. **Members** noted that seafarers from Philippine were covered by POE Agreement. **Captain TRACY** of HKSOA told Members that the compensation under POE was very low. **Members** also noted that as a country with ample supply of seafarers, Philippine could enjoy a competitive edge with POE Agreements. On the other hands, Hong Kong only had a limited supply

of local seafarers, and asserting too much rules and restrictions on foreign ship owners might render it difficult to promote local seafarers for sea going employment.

**Agenda Item 4: Any other Business**

*Way Forward on the Implementation of MLC 2006 in Hong Kong*

21. **Mr. CHENG** reported that Hong Kong would follow Mainland China to rectify MLC 2006 and it was envisaged that MLC 2006 would enter into force internationally around July 2011. **Members** noted that local legislation must be ready by the end of 2010 or early 2011 for the timely implementation of MLC 2006 in Hong Kong.

22. **The Chairman** told Members that MLC 2006 was the result of long discussion at ILO by Member States, including Mainland China and the timely legislation was critical for its implementation in Hong Kong. He also told Members that the tripartite discussion through the TWG could continue to deliberate on issues of common interest to the parties concerned. Also, **Members** noted that SAB meetings could be convened whenever there was a need to advise the Seafarers' Authority on key issues regarding the implementation of MLC 2006 in the territory. However, the legislation work could be a separate exercise having regard to the need to meet the tight time schedule to ensure local legislation could be in place for the MLC 2006 to enter into force in Hong Kong along with Mainland China.

23. **The Chairman** asked Members whether the SAB as a whole agreed on the drafting of legislation for the implementation of MLC 2006 in Hong Kong on the understanding that TWG would continue to discuss outstanding issues regarding the implementation details. **Members** noted that Mr. Louis PONG of the Employers' Federation of Hong Kong had furnished his written endorsement of the paper before the meeting. On behalf of HKSOA, both **Captain Willy CHANG** and **Captain TRACY** expressed their support of the proposal, and endorsed the SAB Paper No. 1/2008.

24. Both **MNOGHK** and **HKSU** might need to convene internal meetings to further deliberate on the SAB paper circulated to them earlier, such that

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formal replies would be available afterward. **Mr. K. K. LEE of AUSHK** said that he needed to check with other members of his association whether the clarifications provided in the meeting were acceptable or not. Hence, he requested for more time before furnishing a formal reply.

*(Post-meeting notes: On 13.2.2009, Mr. SHAU of HKSU furnished his endorsement of the SAB paper No. 1/2008 and further comments on the implementation of MLC 2006 at **Appendix A**. In his reply of 16.2.2009, Captain KUNG of MNOGHK also endorsed the paper and furnished additional comments at **Appendix B**. Mr. K. K. LEE of AUSHK informed SAB on 19.2.2009 at **Appendix C** that he did not endorse the TWG report on the implementation of MLC 2006.)*

25. **The Chairman** told Members that MD would meet MSA Beijing shortly, and it would be an opportune time to coordinate the adoption of MLC 2006 at the scheduled meeting. He reiterated that the TWG could continue to be a platform for further deliberation on outstanding issues whereas the drafting of the legislation work had to start as soon as possible to ensure local legislation could be in place for the implementation of MLC 2006 in Hong Kong.

### **Date of next meeting**

26. There being no other business, the meeting adjourned at 5:00 p.m. Date of next meeting will be announced in due course.

**Secretariat**  
**Seafarers' Advisory Board**  
**June 2009**