

Maritime Labour Convention 2006 Implementation in HKSAR

Introduction

1. The 94th (Maritime) Session of the International Labour Conference in February 2006 adopted an instrument known as the Maritime Labour Convention (MLC), 2006 which would consolidate and update over 60 International Labour Organization instruments adopted over the years to regulate working conditions and protect the welfare of seafarers. The MLC, 2006, which covers health, safety, minimum age, recruitment, hours of work and other vital issues affecting seafarers, will enter into force internationally 12 months after 30 Members States of ILO with 33% of the total world gross tonnage have ratified the Convention.

2. The format of MLC, 2006 is divided into three different but related parts, namely Articles, Regulations and a Code (Part A mandatory Standards, Part B non-mandatory Guidelines). The Regulations and Code provisions are organised under 5 Titles. They are *Title 1*: Minimum requirements for seafarers to work on a ship; *Title 2*: Conditions of employment; *Title 3*: Accommodation, recreational facilities, food and catering; *Title 4*: Health protection, medical care, welfare and social protection; and *Title 5*: Compliance and enforcement. A brief introduction to the MLC, 2006 provided by the ILO is attached in Appendix I. The complete text of MLC, 2006 is attached in Appendix II for reference.

3. The ILO has started a five year action plan since 1 September 2006 trying to achieve rapid and widespread ratification and effective implementation of the MLC, 2006 after its adoption in February 2006. The ILO expects that the entry into force criteria will be met by 2011 so that the MLC, 2006 could enter into force globally in 2012.

4. The Government of HKSAR supports the MLC, 2006 and plans to draft necessary legislation to give effect to MLC, 2006 in the HKSAR in the near future. A Tripartite Working Group (TWG) comprising representatives from the Government, seafarers and employers of Hong Kong registered vessels were formed in January 2007 to study how best the requirements of the MLC, 2006 should be implemented in HKSAR. Details of the composition, including the contact details of the participants and terms of reference (TOR) of the TWG are given in Appendix III as attached.

Report of the MLC Tripartite Working Group

5. A total of 6 meetings had been held from 23 February 2007 to 29 August 2008 under the chairmanship of Mr. Y.M. Cheng, Chief, Maritime Policy of the Marine Department. The Merchant Shipping (Seafarers) Ordinance, Cap. 478, its subsidiary legislation and the Employees' Compensation Ordinance, Cap. 282 (ECO) were considered vis-à-vis the MLC, 2006 by means of the following discussion papers:

- (i) MLCTWG paper No. 1/2007 - 'Articles and Title 1 – Minimum requirements for seafarers to work on a ship' of the MLC, 2006;
- (ii) MLCTWG paper No. 2/2007 - 'Title 3 – Accommodation, recreational

- (iii) facilities, food and catering’ of the MLC, 2006 (Reg. 3.1) – simplified version; MLCTWG paper No. 2/2007a - ‘Title 3 – Accommodation, recreational facilities, food and catering’ of the MLC, 2006 (Reg. 3.1)
- (iv) MLCTWG Paper No. 3/2007 - Title 3 - Accommodation, Recreational Facilities, Food & Catering (Reg. 3.2)
- (v) MLCTWG paper No. 4/2007 - ‘Title 2 – Conditions of Employment’ of the MLC, 2006
- (vi) MLCTWG Paper No. 5/2007 –Title 4. Health Protection, Medical Care, Welfare and Social Security Protection (Regs. 4.1 to 4.4)
- (vii) MLCTWG Paper No. 6/2007 - MLC, 2006 – Regulation 4.2 on Shipowners’ Liability
- (viii) MLCTWG Paper No. 7/2007 - MLC, 2006 – Regulation 4.5 on Social Security
- (ix) MLCTWG Paper No. 8/2007 - Matters arising from previous meetings
- (x) MLCTWG Paper No. 9/2007 - MLC, 2006 - Title 5 - Compliance and Enforcement
- (xi) Draft TWG paper for the submission to SAB and the associated comments from HKSOA, Seafarers’ Representatives and Labour Department

6. The following is a summary of the outcome of the six meetings. In general, the TWG supported the legislative amendments to Cap. 478 as proposed in the above papers with minor changes.

1. First meeting (23 February 2007)

- .1 The main features of the MLC, 2006 and the reasons for establishing the TWG were introduced.
- .2 The terms of reference for the TWG were discussed and agreed. Both the seafarers’ and the shipowners’ representatives confirmed that they would support to implement the MLC, 2006 in the HKSAR.
- .3 The process of having an International Labour Convention applied to HKSAR was introduced. It was planned to have the required new and amended legislation ready by 2009.

2. Second meeting (4 May 2007)

- .1 Articles, Title 1 and Title 3 were discussed. It was agreed that the MLC, 2006 should be examined by the TWG in detail provision by provision.
- .2 The guidance provided in the ILO Resolution concerning information on occupational groups would be followed when determining the categories of persons to be considered as seafarers when making the necessary legislation for the implementation of the MLC,2006 in Hong Kong. (*A copy of the relevant Resolution is attached in Appendix IV.*) [Article]
- .3 All registered Hong Kong seafarers and all Hong Kong registered ships would be subject to the provisions of the MLC,2006 as appropriate. [Article]
- .4 With regard to paragraph 5 of Article IV, social rights could be applied “in practice” or “by any other means” without employing legislative means. [Article]
- .5 The minimum age of 17 for crew working onboard as per Cap. 478 not 16 as stipulated in the MLC, 2006 should be kept. It nevertheless meets the MLC

- requirement. *[Title 1]*
- .6 Criteria should be developed to enable cooks to be certificated for serving on board ships. *[Title 3]*
 - .7 Construction and equipment requirements for accommodation, including headroom requirements, should only apply to ships constructed after the date the MLC, 2006 comes into effect in Hong Kong. *[Title 3]*
3. Third meeting (5 July 2007)
- .1 The content of MLC, 2006 Title 2 was discussed in detail.
 - .2 On the issue of collective bargaining agreement (CBA), seafarers' representatives expressed the view that legislation could be made in Hong Kong to enforce the use of CBA for the purpose of the effective recognition of the right to collective bargaining as stated in MLC, 2006 Article III. The shipowners representative stated that MLC, 2006 only stipulated the need to recognize the right to negotiate CBA not to legislate on the matter. The Labour Department representative explained that the Government had all along been adopting a non-legislative approach to encourage voluntary negotiations between employers and employees and their respective organizations in HKSAR. *[Title 2]*
 - .3 Cap. 478 requires payment of wages in full when a seafarer is discharged from the ship while MLC, 2006 stipulates that all seafarers shall be paid for their work regularly and in full. Cap. 478 will be amended to follow MLC requirements. *[Title 2]*
 - .4 No legislation would deem to be necessary regarding the time to take annual leave as per MLC guideline B.2.4.2, paragraph 1. *[Title 2]*
 - .5 MLC guideline requirements should only be placed in the Hong Kong legislation when it is considered necessary to do so for proper interpretation of a particular provision.
 - .6 TWG considered that the minimum notice period for early termination of a seafarer's employment agreement as given in paragraph 5 of Standard A2.1 could be set at 7 days. *[Title 2]*
4. Fourth meeting (30 October 2007)
- .1 Matters arising from previous meetings –
 - (i) Department of Justice clarified that, under paragraph 3 of Standard A4.5, HKSAR had not been bound to provide social security protection to seafarers who were not ordinarily residents in HK. *[Title 4]*
 - (ii) On controlling the hours of work, the mode of 'minimum hours of rest' should be adopted. *[Title 2]*
 - (iii) The Administration would make use of paragraph 13 of Standard A.2.3 to provide flexibility for the working hours of shipmasters onboard. *[Title 2]*
 - (iv) On "financial security" to be borne by shipowners for duly repatriation of seafarers, as given in paragraph 2 of Regulation 2.5, HKMSIN No. 5/2002 recommends shipowners to follow IMO Assembly Resolution A.930(22) – "Guidelines on provision of financial security in case of abandonment of seafarers". *[Title 2]*

- .2 The complete text of MLC Title 4 was thoroughly discussed in the meeting.
 - .3 The protections for seafarers as required by MLC Regulation 4.2 and Standard A4.2 are to be provided by shipowners, whereas at present similar liabilities are mainly shouldered by employers. The TWG considered that the intent of MLC requirements with regard to who should be the responsible party for seafarers should be addressed through legislation other than the ECO. *[Title 4]*
 - .4 Only those requirements specifically mentioning “National laws or regulations” under MLC, 2006 should be dealt with by means of legislation.
 - .5 The UK “Code of Safe Working Practice” should be used as a basis to meet the MLC regulation 4.3 paragraph 1 relating to OSH issue. *[Title 4]*
 - .6 All Hong Kong registered seafarers are to be informed as far as practicable on the scope of application of Hong Kong legislation if they choose to serve on non-Hong Kong ships, including the non-applicability of the employment injury benefits under the ECO unless the seafarers are recruited or engaged in Hong Kong and their employers have agreed to submit to the jurisdiction of Hong Kong Court. *[Title 4]*
5. Fifth meeting (23 January 2008)
- .1 The proposed actions for Title 5 were tabled for discussion. A new piece of subsidiary legislation under Cap. 478 would be required to give effect to Title 5. *[Title 5]*
 - .2 Recognized Organizations would be required to assist MD in carrying out enforcement duties. *[Title 5]*
 - .3 Seafarers’ representatives raised following concerns at the meeting (a copy of their paper is attached in Appendix V for reference):-
 - (i) Effective recognition of the right to collective bargaining –
 Seafarers’ representatives would like to include CBA in the Hong Kong legislation for the purpose of the effective recognition of the right to collective bargaining as stated in MLC, 2006 Article III. *[Title 2]*
Outcome: The MLC, 2006 only requires a member State to satisfy that its law and regulations respect the fundamental rights to freedom of association and the effective recognition of the right to collective bargaining. There is no provision in MLC, 2006 requiring collective bargaining to be made compulsory by legislative means.
 - (ii) Hours of work for the shipmaster –
 Seafarers were of the opinion that a shipmaster should not be excluded from MLC, 2006 hours of work requirement. *[Title 2]*
Outcome: As previously discussed in the 4th meeting (paragraph 6. 4.1(iii) above refers), being the representative of the shipowners and the boss onboard, shipmasters should be given the flexibility to decide how long they would work to effectively discharge their duties.
 - (iii) The application of MLC, 2006 to ships less than 200 gross tonnage not engaged in international voyage –
 Relaxations to ships under 200gt not engaged on international voyages can only be made after consultation with the shipowners’ and seafarers’ organizations concerned. *[Article]*

Outcome: Supported by the TWG

(iv) Career development for seafarers' employment –

Regulation 2.8 calls for Members to have national policies to promote employment opportunity for seafarers domicile in its territory. Means to encourage employment opportunities for Hong Kong seafarers and guaranteed subsequent employment for seafarers after training were raised by seafarers' representatives.

Outcome: Guaranteed employment after completion of training not supported by TWG as shipowners cannot guarantee seafarers' employment due to factors like personal competency and willingness to work.

(v) Hong Kong seafarers working on foreign flag ships –

Seafarers representatives expressed that Hong Kong should offer the same protection to Hong Kong seafarers working on a ship not registered in Hong Kong. [Title 4]

Outcome: Regulation 4.5 calls for Members to take measures to provide seafarers with access to social security protection, such protection is to complement other protection provided under other titles of MLC, 2006. Seafarers who are subject to a Member's social security legislation are also entitled to benefit from social security protection no less favourable than that enjoyed by shoreworkers. Nevertheless, seafarers working on ships of non-HK registry would be basically subject to the protection of the respective flag Administrations. Hong Kong legislation in general, like local legislation elsewhere, does not have extraterritorial effect, hence ships not registered in Hong Kong would be outside the jurisdiction of Hong Kong Court.

- .4 Discussions on minimum wage for seafarers – As minimum wage for seafarers was referred to in guidelines B2.2.3 of MLC, 2006, i.e. a non-mandatory provision, it is therefore not necessary to enact minimum wage legislation for seafarers for the purpose of adopting MLC, 2006. [Title 2]
- .5 Discussions on social security – The three branches as suggested in paragraph 1 of B4.5 of MLC, 2006, i.e. medical care, sickness benefit and employment injury benefit, for the purpose of meeting the requirements under paragraph 2 of Standard A4.5, were discussed. Labour Department representative advised that it would be necessary to consult the Department of Justice on whether existing legislation or measures in the HKSAR could satisfy the MLC requirements if the abovementioned three branches were chosen. [Title 4]

6. Sixth meeting (29 August 2008)

- .1 TWG confirmed that the HKSAR Government should decide on whether MLC, 2006 should be implemented in the HKSAR, and that the SAB should be a set-up for the tripartite consultation under MLC, 2006.
- .2 Discussion of the draft report to SAB:-
- (i) TWG agreed with all the comments from the HKSOA as given in their paper (a copy of their comment is attached in Appendix VI).
- (ii) Regarding comments (as attached in Appendix VII-Part I) from the Labour Department on matters such as the definition of ships in the

MLC, 2006 as applicable to the HKSAR and the legal status of the Guidelines of the MLC, 2006, TWG agreed that D of J's advice would be needed in due course during lawdrafting stage. As for the protection for all HK seafarers irrespective of the flags of the ships they serve, members noted D of J advised that Hong Kong legislation was not made based on seafarers' nationality and therefore it would not be applicable to those working on foreign ships.

- (iii) Comments (as attached in Appendix VIII) from seafarers' representatives were noted by TWG. All the points raised at this meeting had already been discussed before in other TWG meetings with agreements reached.
- (iv) Regarding MLC, 2006 Standard A4.5 - Social security, TWG agreed that it would be up to the HKSAR Government to decide on which three branches of social security protection under Regulation 4.5 should be chosen for ratification, and that members of TWG would not need to be consulted on this issue.
- (v) TWG agreed (a) to incorporate in the report the proposed changes by Labour Department (as attached in Appendix VII- Part II) except their notes and the amendments as indicated in paragraph 9 of the meeting minutes (Appendix IX-6); and (b) to amend the draft SAB report proposed by seafarers' representatives related to CBA and the promotion of employment opportunities for HK seafarers.
- (vi) TWG members were requested to provide their comments to the LD's proposed amendment to the Appendix VII of the draft report to SAB (the proposed legislative amendment) within one week as members would need more time to go through its contents.

7. On how to meet the requirements of 'Regulation 4.5 – Social Security' and its related Code, SAB may take note of the views from D of J and Labour Department on the selection of the three branches as given below.

- (i) D of J advised that the Government should consider selecting branches of social security other than medical care, sickness benefit and employment injury benefit in view of the limitation of the existing domestic law in offering protection to seafarers who are ordinarily residents in Hong Kong.
- (ii) Three other branches, i.e. unemployment benefit, old-age benefit and invalidity benefit were discussed in the 6th meeting of the TWG. Labour Department indicated the need to seek D of J's further advice on whether the three branches to be chosen (i.e. other than medical care, sickness benefit and employment injury benefit) could meet the requirements of Regulation 4.5 and its related Code.

8. Details of the minute notes for the meetings are attached in Appendix IX.

9. The proposed legislative amendment based on the outcome of the discussion in the meetings and the comments related to above paragraph 6.6.2(vi) are attached in Appendix X.

Action requested of the Seafarers' Advisory Board (SAB)

10. The SAB is invited to:-

- (i) support the implementation of MLC, 2006 in HKSAR (paragraph 6.1.2).
- (ii) agree to adopt the guidance provided in the ILO Resolution concerning information on occupational groups when determining the categories of persons to be considered as seafarers when making the necessary legislation for the implementation of the MLC, 2006 in Hong Kong (paragraph 6.2.2)
- (iii) agree to adopt the minimum age of seafarers to remain at 17 (paragraph 6.2.5) ;
- (iv) agree to adopt the minimum notice period for early termination of a seafarer's employment agreement to be set at 7-day (paragraph 6.3.6);
- (v) agree to adopt the 'minimum hours of rest' mode for counting of working hours for seafarers (paragraph 6.4.1(ii));
- (vi) agree that the Administration has to develop criteria for cooks to be certificated as qualified for serving on board ships (paragraph 6.2.6).
- (vii) agree that paragraph 6 of Article II should be interpreted as MLC requirements may be applied where reasonable or practicable to ships below 200 gross tonnage not engaged in international voyages. Certain relaxations of MLC requirements could be granted for these ships after joint consultations with shipowners' and seafarers' organizations (paragraph 6.5.3(iii)).
- (viii) agree that the Administration has to inform Hong Kong registered seafarers the scope of application of Hong Kong legislation if they choose to serve on non-Hong Kong registered ships (paragraph 6.4.6).
- (ix) agree that it is not necessary to enact minimum wage legislation for seafarers for the purpose of adopting MLC, 2006 (paragraph 6.5.5).
- (x) agree that the Government has the obligation to choose three branches of social security of HKSAR for the purpose of meeting the requirements under paragraph 2 of Standard A.4.5 (paragraph 6.6.2(iv)).
- (xi) consider if there is any need to review the composition and TOR of SAB upon implementation of MLC, 2006 in HKSAR.
- (xii) approve the report in general.

Tripartite Working Group for the
Implementation of MLC, 2006 in HKSAR
15 December 2008