

Seafarers' Advisory Board

Proposal for excluded categories of persons not considered as
"seafarers" under the amendment Bill for the
Merchant Shipping (Seafarers) Ordinance (Cap. 478)

Purpose

The purpose of this paper is to seek members' views on the proposal to exclude certain categories of persons not considered as "seafarers" under the amendment Bill of the Merchant Shipping (Seafarers) Ordinance (Cap.478).

Background

2. The Maritime Labour Convention, 2006 (the Convention) will enter into force internationally with effect on 20 August 2013. In order to implement the Convention in Hong Kong, the Government is in the process of amending Cap.478 thus ensuring that ships registered in Hong Kong and foreign ships entering Hong Kong waters are in compliance with the standards of the Convention.

3. The Convention applies to all seafarers and a "seafarer" is defined as any person who is employed or engaged or works in any capacity on board a ship. However, it is not that any categories of persons are to be regarded as seafarers for the purpose of the Convention and as such, the General Conference of the International Labour Organization (ILO) in the meeting held in February 2006 when adopting the Convention had passed the Resolution VII "Resolution concerning information on occupational groups" (Annex I) for clarifying the issue of the definition of the term "seafarer" in the Convention.

4. The Seafarers' Advisory Board in its meeting on 11 February 2009 agreed to adopt the ILO's Resolution VII 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

The Proposal

5. When drafting the amendment Bill for the implementation of the Convention in Hong Kong taking into account paragraphs 3 and 4 above, it is hereby proposed that certain categories of persons are to be excluded from being considered as "seafarers". These

excluded categories of persons are :

- a. a licensed pilot who works as a pilot in the ship;
- b. the owner who has assumed the responsibility for the operation of the ship or a person (except the master) representing the owner;
- c. an officer of law enforcement agencies carrying out law enforcement duties;
- d. if the ship is a special purpose ship – special personnel* in relation to the ship; (*scientists, researchers, divers, specialized offshore technicians, persons under training in a training ship etc.)
- e. a person who works on board the ship solely within a port or at a port facility;
or
- f. person employed in a ship solely in connection with the construction, alteration, repair or testing of the ship, its machinery or equipment, and not directly in connection with the normal manning of the ship within the deck, engine room or catering department (Section 3(c) of Cap. 478L refers).

Comment and Endorsement Sought

Members are invited to comment on The Proposal and endorse The Proposal for the amendment Bill. 'NIL' return by 11 January 2013 is deemed as The Proposal being endorsed accordingly.

Marine Department
Shipping Division

31 December 2012

Annex 2

<u>Received on</u>	<u>Commented by</u>	<u>Comments</u>
02-01-2013	HK Seamen's Union	<p>我們對SAB Paper No. 1/2012 第5點d “persons under training in a training ship” 是否確定為海員有不同意見。MLC公約中海員定義也未有包含和明確訓練船和受訓人員，免將來發生爭議，我建議刪除這句為好。將來有同類事件，再按Case by Case根據MLC和相關公約法規商定，一旦寫在法規內，就比較難辦。</p> <p><i>English Translation: We have different view with respect to item 5d of the SAB Paper No. 1/2012 in considering whether the “persons under training in a training ship” should be “seafarers” or not. Under the MLC, 2006, “persons under training in a training ship” are not clearly included in the definition of “seafarers”. For saving the argument in future, we suggest to delete this statement. If similar case emerges in future, this can be discussed on “case by case” basis according to the MLC and relevant convention. Once written in the law, it would be difficult to interpret.</i></p>
11-01-2013	Labour Department	<p>I noticed from para 5 (d) of the attached SAB Paper No. 1/2012 that it is proposed to exclude from being considered as “seafarers” <u>persons under training</u> in a training ship if the ship is a special purpose ship. As B3 of the FAQs on MLC 2006 prepared by ILO (at p.13 in the attached) explicitly states that cadets performing work on the ship, although under <u>training</u>, would be considered as “seafarers”, you may wish to consider whether the aforesaid persons are cadets and should therefore be regarded as “seafarers” as advised by ILO.</p>