

VOLUNTARY IMO MEMBER STATE AUDIT SCHEME

AUDIT OF HONG KONG, CHINA

8 – 15 MARCH 2010

AUDIT FINAL REPORT

1 Executive Summary

1.1 An audit of the maritime administration of Hong Kong, China was undertaken between 8 and 15 March 2010 by three auditors drawn from the Australia, Republic of Korea and India. The scope of the audit included the flag, port and coastal State obligations of Hong Kong, China in relation to the mandatory IMO instruments to which it has acceded.

1.2 The audit was conducted through presentations, interviews, examination of documents and site visits.

1.3 The auditors concluded from the information available that Hong Kong, China substantially meets its obligations in respect of the mandatory IMO instruments which are applicable and also the Code for the Implementation of Mandatory IMO Instruments, 2007, as amended (*the Code*). The audit identified a number of areas of good practice which were innovative and of considerable assistance to the administration and maritime community as a whole. The audit also identified areas where improvement was possible.

1.4 As a result of the audit, one non-conformity and one observation were raised. Both items have been considered, analysed and corrective actions put in place by the maritime administration of Hong Kong, China to address them.

2 Introduction

2.1 This report presents the interim findings of the Voluntary IMO Member State audit of the maritime administration of Hong Kong, China. The report has been drafted in accordance with the *Framework and Procedures for the Voluntary IMO Member State Audit Scheme* as indicated by the resolution A 974(24).

2.2 Its purpose is to describe the actual structure of the maritime administration and its processes for implementation and enforcement of mandatory IMO instruments and to present the audit conclusions.

3 Background

3.1 Following the adoption of the Framework and Procedures for the Voluntary IMO Member State Audit Scheme (resolution A.974(24)) by the twenty-fourth regular session of the Assembly, a number of Member States volunteered for audit under the scheme. The current audit of Hong Kong, China was undertaken using fully

the principles established under resolution A.974(24) and the Code for the implementation of mandatory IMO instruments, 2007 (resolution A.996(25)). This report sets out the findings of this audit in the format adopted under the section 7.2 of the Procedures for the scheme.

4 **Members of the Audit Team**

Allan Schwartz	Audit Team Leader (Australia)
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5 **Involved Officials from Hong Kong, China**

5.1 Mr. W.H.Leung, Chief/Technical Policy Branch served as the focal point for the audit team.

6 **Acknowledgement**

6.1 The auditors wish to express their considerable thanks to the various members of staff interviewed and the Hong Kong Marine Department for their fullest co-operation during this audit. In particular, thanks are due to Mr Leung and his assistant Mr. S.F Wong, Senior Surveyor of Ships, for their efforts during the preparation for this audit and for its facilitation.

7 **Scope, objectives and activities of the Audit**

7.1 The Scope of the audit addressed flag, port and coastal State obligations of the maritime administration of Hong Kong, China.

7.2 The objectives of the audit were:

.1 to determine the extent to which Hong Kong, China met the obligations imposed upon it through its adoption of the following applicable mandatory IMO instruments:

.1 the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS 1974);

.2 the Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS PROT 1978);

.3 the Protocol of 1988 relating to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS PROT 1988);

.4 the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended (MARPOL 73/78);

.5 the Protocol of 1997 to amend the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto, as amended (MARPOL PROT 1997);

.6 the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW 1978);

.7 the International Convention on Load Lines, 1966 (LL 66);

.8 the Protocol of 1988 relating to the International Convention on Load Lines, 1966 (LL PROT 1988);

.9 the International Convention on Tonnage Measurement of Ships, 1969 (TONNAGE 1969);

.10 the Convention on the International Regulations for Preventing Collisions at Sea, 1972, as amended (COLREG 1972); and

.2 the effectiveness of the implementation of these objectives.

7.3 There were no exclusions.

7.4 Implicit in this was also the degree of compliance with *the Code*, which mirrors many of the references set out in the applicable mandatory IMO instruments.

7.5 The audit was conducted using the programme set out at Annex 1. The methodology used was to establish through a series of visits, interviews, examination of written records and databases, the objective evidence which would determine the extent to which the maritime administration achieved the objectives.

7.6 The programme followed a process which sought initially to determine the strategy for the implementation of the instruments, the review processes in place and the arrangements for continual improvement. Following this, an examination of the legislation in place which provides the instruments with force of law was undertaken. The processes by which Hong Kong, China develops and makes known its interpretations, policies and instructions regarding these instruments, as well as the practical implementation of these arrangements were also reviewed.

7.7 An opening meeting was conducted on Monday 8 March 2010 at the Hong Kong Marine Department office, in accordance with the Procedures, and an agenda and list of attendees are included at Annex 1. At the closing meeting, held on Monday 15 March 2010 at the Hong Kong Marine Department, a draft interim report was tabled to assist in focussing discussion and the next steps to be taken.

8 Overview and general maritime activities of Hong Kong, China

8.1 General

8.1.1 Functions of the maritime administration of Hong Kong, China are entirely exercised by the Hong Kong Marine Department (HK MD). Annex 2 provides a diagrammatic format of the general structure and responsibilities of each division of HK MD.

8.1.2 In general discussions which were held following the opening meeting, it was established that Hong Kong, China has an established strategy for meeting the objectives of *the Code* and for the implementation and enforcement of relevant international mandatory instruments.

8.1.3 Hong Kong, China is a major hub for shipping in the Asia Pacific and a major import and export port for China.

8.1.4 A Sino-British Joint Declaration (The Joint Declaration) was signed between the Chinese and British Governments in 1984. The Joint Declaration sets out the basic policies of the People's Republic of China (PRC) regarding Hong Kong under the principle of "One Country, Two Systems" whereby the socialist system and policies shall not be practised in the Hong Kong Special Administrative Region (HKSAR) and Hong Kong's previous capitalist system and life-style shall remain unchanged for 50 years. The Joint Declaration provides that these basic policies shall be stipulated in the Basic Law of the HKSAR.

8.1.5 Since 1 July 1997, Hong Kong has become a Special Administrative Region of the People's Republic of China enjoying a high degree of autonomy. Specific provisions have been laid down in the Basic Law on the changes brought about by this new status and on the implementation of the concept of "One Country, Two Systems". The Basic Law is the constitutional document of HKSAR and the blueprint for HKSAR's future development. Under the Basic Law, HKSAR has the autonomy over shipping matters and maintains its Associate Member status in IMO.

8.1.6 The Chief Executive being the head of HKSAR Government, is responsible to the Central People's Government of the People's Republic of China (*the member state*), to ensure that HKSAR discharges its obligations under the various IMO instruments extended to Hong Kong. The Chief Executive issues a "Policy Address" every year (the current one is 2009/2010). Based on the Policy Address, a "Policy Agenda" is set to provide direction for the Secretary for Transport and Housing, who heads the Transport and Housing Bureau (THB), to generate "Objectives" for the Policy Agenda. Under the leadership of THB, there are several Councils comprising government and industry representatives to assist in implementation of the objectives.

8.1.7 The HK MD contributes to the Objectives and Policy Agenda in a strategic manner by producing a "Controlling Officer's Report" to the Legislation Council which approves the budget. This details both the proposed manner of service delivery and the relevant performance measures including the 'pledges'. The performance

measures and pledges are not just an indication of past performance but also include forecasts of expected performance for various objectives into the future.

8.1.8 The Controlling Officer's report, which is provided to Legislative Council via THB, forms the basis for approval and funding for the next year. Feedback from THB can be provided and evidence was sighted to indicate this does occur. Continuous review and feedback through the year is achieved by 2-monthly meetings between Director of Marine and the Secretary for Transport and Housing and also by monthly meeting with the Permanent Secretary of THB. Advice was also received from THB confirming that consultative arrangements exist between THB and the Chief Executive.

8.1.9 The review mechanisms also involve participation from the Hong Kong China industry as a whole. The HK MD has regular consultative group meetings. One particularly significant group is the "Shipping Consultative Committee". This group, which comprised of Government, employer and employee representatives of shipping and related industries, meets around twice a year to discuss relevant maritime matters such as performance of HK flagged ships and updates on future legislation etc. This Shipping Consultative Committee operates under a documented terms of reference and minutes of meetings are published on the HK MD internet site.

8.1.10 It is difficult to determine within the details of either the Policy Agenda or Objectives, the criteria that a strategy should include as defined in section 3 of *the Code* (and auditors manual 6.1 and 6.2) however, there is no question that the Controlling Officer's Report does. In recognising the arrangement in Hong Kong, China that of a single Maritime Administration in HK MD, and the review and amendment arrangements with THB and the Chief Executive, there is no doubt that Hong Kong, China has an appropriate overall strategy.

8.1.11 With the 16% increase in the HK flag tonnage over the last year, future trends are researched. HK MD has identified recruitment as a significant issue. In response, since 2004 they have implemented an incentive scheme for training of new seafarers. HK MD also actively participates in career development campaigns and school visits.

8.1.12 Under the "Basic Law" Hong Kong, China has a high degree of autonomy over shipping. This allows Hong Kong, China to create laws for the purpose of shipping (Articles 17, 43[3] and 124). The first level of these laws are Ordinances with subsidiary regulations. Within the Ordinance it was also demonstrated that regulation making powers exist for the Secretary for Transport and Housing. Merchant Shipping Information Notes (MSIN) are widely used as an information dissemination mechanism but these have no legal status.

8.1.13 The legislative approval process for Ordinance and Regulations creation and amendment are very extensive and detailed having to make passage initially through HK MD processes and then on to THB. Various panels and evaluation assessments must be completed prior to the legislation passing through to the Executive Council and the Legislative Council for consideration adoptions prior to any enactment.

8.1.14 Within HK MD, the Multi-lateral Policy Division is responsible for identifying and suggesting legislative change requirements. Personnel handling such work within the section must be qualified as a minimum to senior surveyor level with relevant experience. These personnel create 'draft drafting instructions' (DDI) for change at least 9-month in advance of the legislative requirement. Audit confirmed that a system exists within HK MD to identify and track these requirements. It was also confirmed that HK MD is meeting the 9-month in advance requirement. The Division also has documented "Guidance Notes for Preparation of Legislation" which is in its 3rd edition.

8.1.15 It was also confirmed during audit that the complete process can take various times to reach finalisation depending on the urgency of the legislative change or creation. Whilst it was indicated that an average time for maritime legislative change may be in the order of three years from start to finish, there are numerous example of changes taking much longer. For example MSC.91(72) which entered into force on 1 January 2002 and MSC.19(58) which entered into force on 1 February 1992 are still to be enacted noting that the DDIs were submitted on 31 December 2003 and 19 April 2004 respectively. Another example is MEPC.118(52) which is a new Annex II to Marpol entered into force on 1 January 2007 and whilst the DDI was submitted on 8 May 2006, the amendment remains outstanding.

8.1.16 The main Ordinances are Cap.369 for SOLAS, LL and Colregs, Cap.413 for Marpol, Cap.415 for Ship Registration and Tonnage and Cap.478 for STCW.

8.1.17 Of significance to this matter, in July 2009, Ordinance Cap.369 was amended to apply SOLAS, LL and Colregs by using **direct reference** to the IMO Convention **as amended**. From this date, the convention amendments for those items covered by Ordinance Cap.369 could be enacted automatically. All that is needed is to promulgate this to industry. This is done by using Merchant Shipping Information Notes. Examples were sighted of the direct reference mechanism in the form of MSC 256(84) – mandatory, and MSC 277(85) – recommendatory.

8.1.18 This direct reference mechanism is currently not in place for Tonnage or STCW and thus all updates for these must follow the full legislative process described above. The HK MD is hopeful that incorporating the direct reference mechanism into those Ordinances will occur in the future.

8.1.19 Noting also paragraph 8.1.15 above, it was also identified that the **direct reference** mechanism has some associated issues for resolution. The impact of the **direct reference** method is that the amendment is happening immediately but the current regulations made under the Ordinances may still include details for the superseded requirements. The potential for conflict between Ordinance and subsidiary legislation exists. For example, SOLAS amendment MSC.262(84) applied amendment 34-08 of the IMDG Code to have mandatory effect from 1 January 2010. Ordinance Cap.369 will have enacted that, but the current regulations in place still reference the previous version of the IMDG Code.

8.1.20 It was also noted that the direct reference provision will NOT have a penal provision which means that whilst compliance is mandated with any amendment to

the applicable convention, until the regulations are updated, there is potentially no penalty provision.

8.1.21 The HK MD has also identified the issues in the preceding two paragraphs and documentation was sighted indicating that THB had issued drafting instructions to the Department of Justice on 29 July 2009 to draft Cap.369 subsidiary regulations but no regulation has yet been enacted during audit.

8.1.22 For the purpose of defining in local legislation who the administration is, and what is “to their satisfaction”, the legislation specifies either the Director of HK MD or a Survey body. The HK MD then publishes on their internet site a list of acceptable interpretations and these are also promulgated using MSINs (example 7/2007).

8.1.23 Penalties exist within the Ordinances/Regulations. From the examples and interview it was demonstrated that these penalties seem to provide an appropriate level of deterrence. Most penalties appear to range from HK\$ 10,000 – HK\$5,000,000 but prison terms also exist for some provisions.

8.1.24 Force Majeure provisions were sighted in various Ordinances and reflect those of the IMO instruments.

8.1.25 *Findings*

.1 Non-conformity NC-01

It was established that the State has not fully given effect to amendments of the mandatory instruments (SOLAS 1974 Article I(a) and regulation VII/3, MARPOL 73/78 Article I(a), and Code part 1 paragraph 7). See A-NC-01

Corrective action

- .2 The adoption of a direct reference approach in 2009 for the Merchant Shipping Ordinances has set the model for future legislation to follow, thus giving immediate effect to technical amendments of mandatory IMO instruments under the tacit acceptance amendment procedure. The maritime administration will undertake the necessary drafting of national legislation for safety and environment protection related amendments of mandatory IMO instruments that are currently due to enter into force, by applying the direct reference approach, in 2011. Drafting of all outstanding legislation will be completed in 2011 with time frame for enactment in 2012. The feasibility of setting up in-house legal section will be explored to speed up the legislation process within two years’ time.

Root cause

- .3 Prolonged legislation process.

8.2 Flag State activities

8.2.1 A description of the flag State activities of HK MD is shown in Annex 2. The Hong Kong, China flag is an extensive one with around 1,500 ships trading internationally and an extensive coastal fleet. All flag State activities are undertaken by HK MD.

8.2.2 Apart from the legislative requirements for flag State compliance described above, the Ship Safety Branch (SSB) carries out the majority of flag State activities. The SSB applies an externally certified management system in accordance with ISO 9001:2008. Initial certification occurred in 2003.

8.2.3 The scope of the external certification is:
“The provision of services related to the survey, inspection, audits and quality assurance of passenger and cargo ships registered in Hong Kong, PSC inspection, ship security matters and arrangements of training for staff of Ship Safety Branch”.

8.2.4 Within SSB are the Cargo Ships Safety, Security & Quality Assurance, ISM and Passenger Ships Safety sections. The Cargo Ships Safety section carries out the flag State inspection regimes except for passenger ships, which are carried out by the Passenger Ships Safety section. Currently, passenger ships flying Hong Kong flag include 56 HSC plying between Hong Kong and Macau and one ro-ro passenger ship trading between Xiamen and Kaohsiung.

8.2.5 The flag State oversight is conducted by a routine assessment of all the HK flagged ships. A score, calculated from a HK MD database, is given to each ship and if it exceeds a specified limit, a Flag State Quality Control (FSQC) inspection is conducted. These inspections have an associated procedure, checklist and report. The FSQC inspection takes around 3 days for a single surveyor to complete and if initiated due to poor performance, the operator of the ship is required to meet all costs.

8.2.6 These inspections are conducted all around the world. If the port stay is insufficient to allow the inspection to be completed by a single surveyor, then two will be sent. This appears to be an effective flag State monitoring program and an effective deterrent against poor performance. In one case, the poor performance of one ship, further highlighted by the FSQC, resulted in de-registration of the ship.

8.2.7 The audit verified the process and documentation for two complete FSQC, including full reporting.

8.2.8 Similar to the FSQC program a pre-registration quality control (PRQC) inspection also exists.

8.2.9 During 2009, 50 FSQC and 10 PRQC inspections were conducted, worldwide. This accounts for about 5% of the Hong Kong, China fleet of trading ships.

8.2.10 Analysis of ship performance includes PSC data. The HK MD also monitors and reviews the performance of their fleet in general, benchmarking against other PSC regimes (Paris, Tokyo, USCG). The HK MD also has some performance measures they use in these assessments. The benchmarking used by HK MD with other PSC regimes is to compare detention rate, deficiencies per inspection and the number of inspections with nil deficiencies. In the five year trends observed, Hong Kong, China's flag performance was in all cases better than the average results of other PSC regimes.

8.2.11 The HK MD publishes an analysis of their performance as a flag State on their internet site.

8.2.12 The cargo ships safety section achieves these functions with 1 senior surveyor, 5 surveyors and 1 radio surveyor. The roles and responsibilities are documented in the Management Manual and also in more detail within a duty list. General and individual training needs are identified and provided by the section manager. Whilst the formal FSQC inspections have been conducted for at least 10 years, the current formalised training regime has only been implemented since about 2007. In late 2009 it was further refined. Records exist for this and whilst these records were not particularly clear when first sighted, this was rectified overnight. Maintenance of training records for surveyors of passenger and HSC ships is still undergoing development and should be further enhanced.

8.2.13 The audit confirmed that arrangements are enacted for formal exemption/equivalence provisions allowed in the conventions. It was noted that legislative delegation is given to the HK MD Director but this is practically implemented by an internal minute to the Director being acknowledged, thus authorising someone else to sign.

8.2.14 It was noted in two samples that the level of checking on the veracity of information provided by the company in regard to temporary dispensations for a defective lifeboat engine and defective fire pump could have been more stringent.

8.2.15 In regard to Load Lines Convention, the audit reviewed processes and issuance of exemptions. A sample of exemptions granted were viewed along with notification to IMO. The process and outcomes met the obligations of the Convention.

8.2.16 Approvals of liferaft servicing depot are carried out by HK MD. One such approval was sighted and verified as compliant with SOLAS III/20.8 and A.761(18).

8.2.17 It was noted that a MSIN was issued in 2006 regarding MSC.Circ 1206. It was also observed that HK MD decision on extension of phase out dates of tankers carrying heavy grade oils was notified to IMO and a MSIN was issued.

8.2.18 The audit also verified that an equivalence to SOLAS I/11, regarding maintenance of condition of the ship, exists within national legislation. Noted also, that whilst notification to the flag state is required, there are no specifications of what must be reported for example corrective actions and causes etc.

8.2.19 The certification branch of seafarers was also audited. It was confirmed that resources to ensure training, assessment and certification of seafarers are in accordance with the provision of the Convention.

8.2.20 The process of minimum safe manning assessments was reviewed as part of this audit. The audit reflected that the IMO Resolution A.890(21) as amended, is followed. Discussions were held in regard to the entry at the bottom of the certificate relating to sailing with one less than the required number of deck, engineer and/or ratings, whereby the ship continues to be undermanned for a period not exceeding 28 days. It was noted that this provision allowing the ship to sail with one less for up to 28 days emanates from s14 of Cap.478J, however that provision does not include ratings and does not provide for a discretion power of the Director as indicated on the certificates sighted.

8.2.21 Within the Ordinance covering STCW, appropriate penalties and enforcement provisions are available to the HK MD in regard to inappropriate use of certificates or endorsements.

8.2.22 It was confirmed the Hong Kong, China has in place laws to implement all annexes of MARPOL. The audit sampled the implementing legislation to verify that all the MARPOL provisions were enacted. This sampling did not identify any provisions not within legislation (noting however the contents of paragraph 8.1.15).

8.2.23 It was however noted specifically in Ordinance Cap.413M, s44 deals with appointments of “Government Surveyors” to enforce the Ordinance. This Ordinance enacts MARPOL Annex VI. It was unable to be demonstrated that anyone has been appointed under this provision. This implies that no one is appointed to check bunker certificates or conduct inspections under s34 and s39 of the Ordinance, as those powers are specified as only being available to “Government Surveyors”. The power in inspection under s39 also extends to preventing a ship proceeding to sea if not in compliance. This appears to indicate that whilst compliance with MARPOL Annex VI is required, and noting also this includes penalties provisions, that there is no, or limited, enforcement capabilities available under Ordinance 413M. This legal question was unable to be fully answered during the audit.

8.2.24 The arrangements for general authorisations of surveyors were also subject to audit. It was noted that under each Ordinance a power to appoint authorised surveyors is provided and associated powers are provided to appointed persons. A number of appointments were inspected and it was noted that appointments under Ordinance Cap.369 were common. This allows for powers related to SOLAS, Load Lines and COLREGS.

8.2.25 It was subsequently presented that under Ordinance Cap.313, a general power of inspection is given to an ‘authorized officer’ (s59). It is accepted that this covers the HK MD surveyors. This power however does not seem to extend to intervention (detention), which under Ordinance Cap.313 is only given to the Director (s12). It is the policy of HK MD that only the Director may exercise the power to detain a ship. Ships found unsafe to proceed to sea under port State control are prevented from leaving Hong Kong by withholding port clearance. There is a matter

of clarity whereby HK MD should specify clearly the powers as enacted in the legislation of the inspection and intervention of HK MD's surveyors

8.2.26 Noting the preceding four paragraphs and lack of any documented information on this, the audit was unable to clearly establish the mechanism by which HK MD surveyors are authorised to conduct all their functions and enforcement activities.

8.2.27 The HK MD has authorised nine classification societies as recognised organisations (ROs). These are ABS, BV, CCS, LR, DNV, KR, ClassNK, RINA and GL. The criteria used by HK MD for authorisation follows that of A.739(18). The authorisations are for full and partial authority, the details of which are included in each agreement.

8.2.28 A sample written and signed agreement was selected and the full process confirmed, including its reissue upon reaching the expiry date. At the time of reissue it was observed that it was amended to reflect updated Convention requirements and their level of authorisation.

8.2.29 The HK MD has authorised RO delegations to all provisions **apart** from:

- Passenger ship safety certificates
- Passenger ship ISM DOC
- Passenger ship ISM SMS; and
- Passenger ship stability unless specifically approved by HK MD on a case-by-case basis.

8.2.30 Specific investigation was conducted in regard to the mechanism for updating of authorisations during the term of the agreement. Specifically during the term of the sampled agreement, MARPOL Annex IV and VI were applied by HK. In accordance with the written agreement, these updates were achieved by formal letter from HK MD to each RO. A Merchant Shipping Information Note was also used to promulgate the information to industry as a whole.

8.2.31 Having confirmed the content and preparation of an agreement, the audit then proceeded to verify the requirements imposed upon one RO. A ship was selected at random and its full certification and survey history reviewed. Full compliance with the agreement was verified in that case.

8.2.32 The audit then moved on to the monitoring of RO performance. HK MD requires supply of all certificates issued within 1 month of issue. This is a measure used in the assessment of performance. The HK MD also issues a list of general concerns to all ROs and to all ships/companies on an annual basis. This is based on PSC deficiency information. HK MD also participates in all ISM DoC audits for new companies and any identified poor performing companies. This amounts to about 30 audits per year to be observed by 2 dedicated ISM auditors from the department.

8.2.33 HK MD meets with their ROs annually to discuss past, current and future issues. This includes some performance assessments. It was noted in the minutes of the last meeting that a very broad and comprehensive list of items was discussed,

including flag/ship performance and the association with ROs. Ad hoc meetings are also facilitated.

8.2.34 The IMO database, GISIS, was viewed to confirm whether details of the ROs authorised by Hong Kong, China were entered. It was found that all nine were entered. On a minor note, it was observed that a small number of details on the level of authorisation required updating (for example MARPOL Annex VI authorisations).

8.2.35 The audit also addressed the level of compliance with IMO reporting. It was noted that mandatory IMO MARPOL reports (MEPC/Circ 318) are consistently provided to IMO and the 2009 report was submitted to IMO on 2 March 2010. It was also observed that the Multi-lateral Policy Division controls a list of IMO reporting requirements. Around February of each year, the items of the list are distributed to the relevant area/manager for updating and reporting as required.

8.2.36 Notification to IMO in regard to ROs delegated by Hong Kong, China for certification under the Bunkers Convention was shown (noting that the Bunkers Convention is not covered by this audit, it is however a good representation of the responsible approach by HK MD to meeting obligations in general).

8.2.37 It was observed that HK MD also has updated and has current information within GISIS for flag State contact points.

8.2.38 The Maritime Services Training Institute, MSTI (formerly known as 'Seamen's Training Centre',STC) is located at the coast in New Territories, Hong Kong, China with an area of 16,000 square metres. The adjacent waterway provides good sheltered water for survival craft and rescue boat training.

8.2.39 The Institute provides all the four MANDATORY STCW training courses for seafarers and also familiarisation courses for oil, chemical and gas tankers, GMDSS Courses. Crowd Control and Crisis Management on passenger ships and a three year programme for deck officers. In addition there are several tailor made safety training courses to meet requirements of clients in the maritime industry.

8.2.40 The trainers to student ratio was found adequate and all trainers and faculty were approved by the HK MD. The mandatory safety and training courses were approved by the HK MD and the Institute maintain a quality management system certificate from DNV for all the training courses.

8.2.41 *Findings*

.1 Observation OB-01

It was unable to be effectively and clearly demonstrated exactly how the powers of inspection and intervention of Hong Kong Marine Department surveyors are enacted (SOLAS 1974 regulations I/ 6, I/ 19 and Code part 2 paragraph 27). See form A-OB-01

Corrective action

- .2 Based on consultation with the Department of Justice, the Administration has formally appointed surveyors under national legislation covering all requirements of the mandatory IMO instruments. With regard to general powers of intervention, including detention of a ship, for which only the Director of the Administration was authorized directly under national legislation, but with a possibility to delegate such powers to any public officer, documents have been issued to effect proper appointments and document them accordingly. As a preventive action, future maritime legislation involving appointments of the Administration's surveyors will be effected and documented immediately.

Root cause

- .3 There was a lapse in effecting and documenting the appointments of the Administration's surveyors pursuant to national maritime legislation.

8.3 Investigation of maritime accidents

8.3.1 The Marine Accident Investigation & Shipping Security Policy Branch (MAISSP) examines and investigates all types of marine accidents, including marine industrial accidents that occurred to or on board ships flying the flag of Hong Kong, China worldwide, and marine accidents of other ships in the waters of Hong Kong, China.

8.3.2 The MAISSP is within the organisational structure of the HK MD.

8.3.3 The investigators of MAISSP have working knowledge and professional experience to conduct investigations of all maritime casualties irrespective of the location of the casualty or incident.

8.3.4 Casualties are reported to IMO in accordance with the relevant IMO Conventions, and the guidelines developed by IMO. A noteworthy example was the report of investigation into the collision incident involving the Hong Kong, China registered tanker *Hebei Spirit* on 7 Dec. 2007. The serious incident was well investigated, published and reported to IMO in accordance to IMO Res. A.849(20). An appropriate Merchant Shipping Information Note was issued depicting the incident and highlighting the requirements of safe towage at sea. It was observed that the Administration did put up details of all maritime incidents on IMO's GISIS data base of marine casualties and incidents.

8.3.5 The HK MD evaluates their performance with respect to accident investigations by the collection of statistical data, analysis of accidents and incidents on their ships. Relevant accidents and incidents information, in and beyond Hong Kong, China waters, are regularly published indicating the type of accidents with number of serious casualties or injuries, if any.

8.3.6 It was observed that the Head of the MAISSP is also representing Hong Kong, China at IMO meetings for MSC, STW and FSI and is responsible for LRIT and Ship Security. This branch is under the Multi-Lateral Policy Division which also has other branches e.g. Technical Policy Branch and Maritime Policy Branch. Therefore the Head of MAISSP reports to the Assistant Director of Multi-Lateral Policy Division.

8.3.7 It is acknowledged that the Multi-Lateral Policy Division is not the area of HK MD to make decisions to take administrative or disciplinary action against an individual or organisation in a marine casualty, however, the 'degree of separation' from those sections of HK MD needs to be very carefully monitored to ensure independence as defined in sections 16.1 of the *Casualty Investigation Code* (MSC.255(84)).

9 Port State activities

9.1 This function is conducted by the Port State Control Section of the Shipping Division. It is covered by the ISO certification mentioned above. The section has 1 senior surveyor and 6 surveyors conducting PSC inspections on ships calling to Hong Kong, China. A documented training program is provided and the fundamental principles of that are to recognise the existing level of training and qualifications held by the surveyors (minimum Chief Engineer, Master, or Naval Architect) in conjunction with a specified number of accompanied inspections. The number of inspections to be witnessed prior to an assessment is dependent upon whether the surveyor has any pre-existing experience with a classification society and/or a PSC regime.

9.2 As PSC inspections are only conducted by permanent employees of the HK MD, there are no commercial interest conflicts with the shipping industry or Hong Kong, China ROs.

9.3 The HK MD is a member of the Asia Pacific Memorandum of Understanding on Port State Control (TokyoMOU) and utilises the database (APCIS) for storing, retrieving and evaluating PSC inspection history of a ship. This membership also allows HK MD to assess its performance against other maritime administrations within the region.

9.4 As discussed in paragraphs 8.2.24 to 8.2.26, the powers for inspection are most likely provided for PSC by Ordinance Cap.313. It was confirmed that the surveyors conducting PSC inspections all have identification documents issued.

9.5 The audit of the PSC implementation process was conducted by selecting one surveyor/PSCO and reviewing his process for two complete inspections. Firstly, it was confirmed that the surveyor selected was appropriately qualified and trained in compliance with HK MD requirements, *the Code* and IMO A.787(19).

9.6 The following was confirmed for 2 PSC inspections:

1. Selection of ships for inspection was confirmed by the Senior Surveyor based on safety for boarding, profile of the ship, last inspection and APCIS target factor.
2. Past history of the ships was reviewed from APCIS.
3. Checklists were used for the inspection, tailoring the level of inspection by taking into account factors such as age and risk level.
4. Deficiencies were issued appropriately.
5. Records were captured in APCIS appropriately, after entry by the attending surveyor and verification by the Senior Surveyor.

9.7 The HK MD participates in the Concentrated Inspection Campaigns conducted by the TokyoMOU.

9.8 Ongoing training was discussed and it was stated that ongoing training in ISM, GMDSS, confined spaces and briefing sessions on legislation changes were all provided to the surveyors undertaking PSC. The fact that all the surveyors/PSCOs are in a single office allows informal daily discussions on PSC matters and also allows surveyors of each discipline to exchange information.

9.9 It was also noted that the surveyor was finalising some training aids for use of his colleagues in regard to lifeboats and dangerous goods.

9.10 Reception facilities – whilst no legislation exists to enforce provision of a shore based facility in Hong Kong, China in accordance with provision 5.6 of MEPC.83(44), this is not a mandatory requirement and industry initiatives fill the need.

9.11 Capital Waste Management (CWM) is the single reception facility for MARPOL Annex I and II products. CWM is contracted, overseen and monitored by the Hong Kong, China, Environment Protection Department.

9.12 The facilities available utilise heating, processing equipment, biological reactors and a high temperature incinerator to reduce and dispose of residues. The plant opened in 1993. The demand on the plant has reduced over the last 10 years, mainly due to relocation from Hong Kong, China of the land based industries using the facility. The plant processed about 100,000 t per year in 1995, they are now down to about 40,000 t.

9.13 MARPOL disposals have remained fairly consistent and is currently about 60 -75% of current throughput. The residues are generally collected from ships by barge. Costs of these services seem reasonable. Only a very small amount of the MARPOL residues received is NLS.

9.14 Discussions with HK MD indicated that MARPOL Annex IV and V wastes are organised by the Drainage Services Department and HK MD respectively. Sewage is collected by a commercial contractor and discharged to waste processing facilities. Garbage, including plastics, is collected and discharged to land fill.

9.15 Discussions with both HK MD and HK Environmental Protection Department indicated that whilst reception facilities for Annex VI disposal have not

been “officially nominated”, the current high temperature incinerator could in fact readily deal with Annex VI residues.

9.16 It was identified that HK MD use GISIS for recording reception facilities details. It was noted that 18 entries are provided, 16 for Annex I and II and one for Annex IV and one for Annex V. There were no reports of inadequacy.

9.17 As noted earlier, it was confirmed that the mandatory IMO MARPOL reports (Circ 318) are consistently provided to IMO and the 2009 report was submitted to IMO on 2 March 2010.

10 Coastal State activities

10.1 The Vessel Traffic Centre (VTC) was audited as per the requirements of *the Code*. The facilities are well located adjacent to the pier for Passenger Ferries on Hong Kong Island.

10.2 The VTC is established to implement the various Regulations under the Hong Kong, China “Shipping and Port Control Ordinance” and to comply with the Flag and Coastal State requirements of SOLAS Chapter V. The VTS system is mandatory and applies to all ships over 300 GT. Ships are informed about the pre-arrival notification, Initial Reporting and Calling In Point Report(CIP) as per navigation area procedures and IMO SRS.

10.3 During 2009 the port activities recorded in excess of 205,500 ship arrivals at Hong Kong, China and over 13,500 ships transited through the port. There are 24 anchorages promulgated by the Government, 17 mooring buoys owned by the Government and around 1,800 privately owned mooring buoys.

10.4 There are 102 licensed pilots and pilotage services provided by a private company. Pilotage is compulsory for all ships of 3,000 GT and more.

10.5 The VTC was found well equipped for monitoring and controlling safe passage of all ships entering and transiting the port and systematic control was seen to be exercised for the Traffic Separation Scheme and for providing pilotage to the ships round the clock and in all weather conditions. There are 14 designated ‘Typhoon Shelters’ and adequate arrangements for ships’ routeing and reporting and for distress situations (Reg V/33.1-1).

10.6 The audit observed that the VTC System was found to be efficiently implemented and there was evidence to show that periodic review which was conducted by the quality assurance and development section of the VTS Branch for continuous improvement. There are sufficient administrative processes in place and the necessary resources to meet Hong Kong, China obligations as required by the Conventions. Technical support, adequate training and document management are well established.

10.7 Marine incidents are handled by VTC if they are marine traffic related and within Hong Kong, China waters, and by MRCC if safety related and outside Hong Kong, China waters. The VTC and MRCC are both under the Port Control Division.

10.8 On receiving a message the Marine Traffic Management team at VTC will obtain as much relevant data as possible and log on the “Incident Initial Report Sheet”. They will then deploy appropriate resources to the scene and inform Port Management Office who will then inform all relevant units and resources. Similarly MRCC will react and report to MAISSP for incidents outside Hong Kong, China waters.

10.9 The Coordination of SAR services was well established and a system is in place for periodic, independent review as per SOLAS obligations (Ch V/7.2).

10.10 The VTC ensure compliance with the obligations of NAVAREA Co-ordinator and promulgation of Navigational warnings.

10.11 The MRCC is responsible for meeting the international obligations of Hong Kong, China for GMDSS Implementation including the GMDSS Master Plan, NAVTEX and Safety NET services.

10.12 A visit to the Hong Kong, China Government Dockyard situated in Kowloon was undertaken. The Workshop for maintenance, servicing and repair of all AtoN was inspected. This workshop operated by the Aids to Navigation and Mooring Unit is engaged in maintenance and upkeep of the illumination part of all AtoN for safety of navigation in Hong Kong, China waters, the maintenance of the body of the floating AtoNs is outsourced to a qualified contractor. Two purposely built vessels and a van operated by the Unit are used for carrying out the maintenance/repair work to the AtoNs at spot. The department maintains the necessary and adequate spares and equipment to ensure the continuous functioning of AtoNs. The equipment was stated to be in compliance with IALA standards.

10.13 The AtoNs consist of 120 Lighted Buoys, 420 Lighted Beacons, 1 Racon and 7 fog horns. Any establishment, withdrawal and changes of AtoN, Fairways, anchorage marking, buoys and other port facilities are communicated to the industry in writing by the Director of the HK MD by issuing ‘Marine Department Notices’ indicating the time allotted for the work and the relevant drawings.

10.14 This Government Dockyard also houses the Hong Kong Hydrographic Office. The function resides with the Planning and Services Division of the HK MD. The department is headed by the Hydrographer. Whilst not a member of IHO, Hong Kong, China participates within the delegation of China, who is a member.

10.15 The functions and services of the department are Surveying and Nautical Charting and include:

- Bathymetric surveys
- Preparation and publication of Nautical Charts
- Electronic Navigation Charts
- Real Time Tidal measurement and promulgation

- DGPS –Correction service
- Emergency response to locate wrecks and underwater obstructions.

10.16 The standards followed are of IHO S-44. The survey cycle varies from 2-4 months for busy terminals to 60 months in remote waters. Yearly output is about 300 sq. Km out of the almost 3000sq. Km. area of Hong Kong, China waters. The department has three survey ships stated to be well equipped with the latest equipment including multi-beam echo sounder, side scan sonar etc.

10.17 Paper nautical charts conforming to IHO standard S-4 are on a regular cycle of review and update. In addition, all nautical publications and charts for ships are also published. Notices to Mariners (NtMs) are issued bi-weekly in Chinese and English and distributed by internet. The NtMs are updated from internal bathymetric surveys and NtMs of neighbouring authorities.

10.18 Electronic navigational charts are produced to IHO S-57 Standards and e-Notice to Mariners are issued to mariners via internet downloads. High Density Electronic Navigation Charts are produced by use of multi-beam depth sounding and side scanning.

10.19 Although there is no quality assurance certification, the system was found to be under strict quality control and verification procedures strictly implemented and conform to IHO Standard S-58.

10.20 The department participates in regional hydrographic affairs, technical exchanges for capacity building and training of personnel.

10.21 Although no official decree or legal text was seen assigned for the hydrographic services being provided, the department was found to be fully equipped and implementing the requirements of SOLAS Ch. V-9, V-2 for all hydrographic services related to safety of navigation.

10.22 The HK MD is responsible for responding to marine pollution incidents. This is facilitated by maintaining the “Marine Oil Spill Response Plan”, which documents procedures, arrangements and assigns roles and responsibilities within HK MD and other response agencies. The plan is continuously updated to the latest spill control practice observing the latest IMO Resolution.

10.23 The HK MD takes the necessary measures to ensure the observance of international rules on exercising their rights and fulfilling their obligations by incorporating these into the local legislations.

10.24 The programs of control & monitoring are provided for the allocation of statistical data, timely response to pollution incidents in its waters, and these are evaluated periodically.

10.25 The audit also established that the target response times are no more than 2 hours for spills within the Harbour, no more than 3 hours if the spill is within 15 nautical miles from the Harbour and no more than 4 hours if the spill is at any other part of the waters of Hong Kong, China.

10.26 To enable HK MD to meet its targets, various assets and arrangements are in place. “Rapid Deployment Assets” are contracted and equipped to respond to no less than 10% of the established maximum threshold spill amount. This threshold is determined on the basis of a full risk assessment and is currently calculated to be in the order of 5,600 t. The chosen contractor has management systems certified in accordance with ISO 9001 and ISO 14000.

10.27 Equipment for response (booms, dispersant, skimmers, helicopter dispersant buckets etc) is distributed around Hong Kong, China. A component of the contract with the commercial provider includes maintenance and upkeep of the equipment. Even so, HK MD has in place an audit arrangement to confirm the continued availability of equipment and supplies.

10.28 Training for personnel and regular drills are conducted. Monthly drills are conducted by the contractor based on scenarios given by HK MD with minimal notice. A full annual drill is also conducted involving all agencies. All drills are reviewed as part of the assessment process and the annual drill includes independent observers.

10.29 It was noted that Hong Kong, China does not have any formal plan for chemical/NLS spill response. It was explained that there is only a very minimal amount of bulk chemical/NLS entering or leaving Hong Kong, China. The majority of chemicals are in packaged form and any incidents involving these onboard a ship or in the port are responded to by the Fire Services Department and Environmental Protection Department.

11 Conclusions

11.1 *Areas of positive development*

11.1.1 Areas of positive development include:

- .1 The use of the “direct reference” approach (paragraph 8.1.17) will in time greatly assist Hong Kong, China in expediting the legislative obligations. (general obligations)
- .2 The FSQC program appears to be a particular effective oversight and compliance tool for monitoring compliance to international and national laws by ships flying the national flag. (paragraph 8.2.5). (flag State obligations)
- .3 To benchmark the flag’s performance, using both positive and negative indicators, is a very progressive way of performance measurement (paragraph 8.2.10). (flag State obligations)
- .4 The professionalism, knowledge and arrangements of the VTC, MRCC and Hydrographic Office were noted. (coastal State obligations)

- .5 It was readily apparent, that the maritime administration employs highly qualified, experienced professional and dedicated personnel in all positions. (general obligations)
- .6 During audit it was noted that the Administration had notified IMO of completion of the implementation of quality standards for the second cycle of STW compliance with I/8. Whilst not covered specifically by this audit, the auditors are aware that this would make the Administration one of the very few to have done this. (flag State obligations)

11.2 *Areas for further development*

11.2.1 Areas for further development include:

- .1 The Administration should continue to be vigilant in validating information provided by operators in their requests for temporary dispensations etc. (paragraph 8.2.14). (flag State obligations)
- .2 Consideration should be given to whether the Administration would benefit from requiring additional information to accompany reports received from ships and operators concerning equipment and ship faults (paragraph 8.2.18). (flag State obligations)
- .3 The Administration should enhance the maintenance of training records for passenger and HSC surveyors (paragraph 8.2.12). (flag State obligations)
- .4 The Administration should review the Minimum Safe Manning Document format in regard to the allowance for sailing without a full complement of shipboard personnel (paragraph 8.2.20). (flag State obligations)

12 **Annex**

12.1 *Non-conformity*

Form A-NC-01

12.2 *Observation*

Form A-OB-01

ANNEX

VOLUNTARY IMO MEMBER STATE AUDIT SCHEME

(Form A)

FINDINGS	
Member State: Hong Kong, China	Audit Period: 8 – 15 March 2010
Department: Maritime Administration	File No.:
Non-conformity No.: NC-01	Observation No.:
<p>FINDINGS: Non-conformity</p> <p>It was established that Hong Kong, China has not fully given effect to amendments of the mandatory instruments.</p> <p>Objective evidence:</p> <ul style="list-style-type: none"> the extensive list of outstanding legislative changes for all Conventions, but particularly Marpol and SOLAS, noting that of these, actions had been commenced to achieve change in a timely manner but remain incomplete. It was noted in some cases an amendment had been within the process for 6 years. For example MSC.91(72) which entered into force on 1 January 2002 and MSC.19(58) which entered into force on 1 February 1992 are still to be enacted noting that the “draft drafting instructions” were submitted by HK MD on 31 December 2003 and 19 April 2004 respectively. Another example is MEPC.118(52) which is a new Annex II to Marpol, entered into force on 1 January 2007 and whilst the DDI was submitted on 8 May 2006, the amendment remains outstanding. the discrepancy between the new “direct reference” method of enabling a SOLAS amendment with the existing regulations – for example, the direct reference method will have enabled MSC.262(84) amendment 34-08 of IMDG Code on 1 January 2010 but the subsidiary legislation still references the previous version as the applicable one. 	
<p>APPLICABLE PROVISIONS OF THE AUDIT STANDARD:</p> <p>SOLAS Article I (a) - General Obligations under the Convention <i>The Contracting Governments undertake to give effect to the provisions of the present Convention and the Annex thereto, which shall constitute an integral part of the present Convention.</i></p> <p>MARPOL Article I (a) - General Obligations under the Convention <i>The parties to the Convention undertake to give effect to the provisions of the present Convention and those Annexes thereto by which they are bound, in order to prevent the pollution of the marine environment by the discharge of harmful substances or effluents containing such substances in contravention of the Convention.</i></p> <p>SOLAS Chap. VII / Part A-Reg.3(Requirement for the carriage of dangerous goods) <i>The carriage of dangerous goods in packaged form shall be in compliance with the relevant provisions of the IMDG Code.</i></p>	

Code Part 1, paragraph 7.

When a new or amended IMO mandatory instrument enters into force for a State, the Government of that State must be in a position to implement and enforce its provisions through appropriate national legislation and to provide the necessary implementation and enforcement infrastructure.

Auditor: A Schwartz**Date:** 15 July 2010**Team Leader:** A Schwartz**Date:** 15 July 2010**Member State:** *(Signature)***Date Received:** 15 July 2010

(Form B)

CORRECTIVE ACTION PLAN AND FOLLOW-UP ACTION					
Member State	Hong Kong, China		Audit Period:	8 – 15 March 2010	
Department:	Marine Department		Auditor:	A Schwartz	
Findings Type:	NC	No.	01	File No:	
Proposed Corrective Action:					
<p>1. The adoption of ‘Direct Reference Approach’ in July 2009 for the Merchant Shipping (Safety) Ordinance has set the model for future legislation to follow thus giving immediate effect to technical amendments of IMO mandatory instruments under the tacit acceptance amendment procedure.</p> <p>2. DDI for MEPC.118(52) (specific objective evidence under dot point 1) submitted in 2007 is written in DRA manner overwriting pervious version. For MSC.91(72) and MSC.19(58), DDIs using DRA will be completed in 2011 and the time frame set for enactment is 2012. DDIs using DRA overwriting previous versions for other outstanding legislation on MARPOL's Annex I, Annex III, Annex IV, Annex VI and SOLAS's II-1, II-2, IV, V, VI and VII will also be completed in 2011 with time frame set for enactment in 2012.</p> <p>3. To explore the feasibility of setting up in-house legal section to speed up the legislation process within two years’ time.</p>					

For Action:	
Member State:	Hong Kong, China
Copies to:	<input type="checkbox"/> _____ Name Date
<input type="checkbox"/>	<input type="checkbox"/> _____ Name Name
(Date Received):	_____ Date _____ Date

Root Cause:
Prolonged legislation process.

Proposed Preventive Action:

Future legislation for IMO mandatory instruments will adopt “Direct Reference Approach” for technical amendments. Effort will be delivered to carry out a feasibility study of setting up legal office within the maritime administration to speed up the legislation process. Law drafting of outstanding legislation will be completed in 2011 with time frame set for enactment in 2012.

Action Plan Submitted:

By Hong Kong Marine Department On 1 Nov. 2010

To: Audit Team Leader:	<u>A Schwartz</u> Name	IMO Secretariat:	<u></u> Name
<input type="checkbox"/> For Review:		<input type="checkbox"/> For Information:	
Signature	Date	Signature	Date
Copies to: <input type="checkbox"/>		<input type="checkbox"/>	
<input type="checkbox"/>		<input type="checkbox"/>	

Action Implemented:

By _____ On _____

Verification of Effective Implementation:

Sign off, as appropriate:

Member State Representative	Date	Audit Team Leader	Date
Relevant Department Head	Date	IMO Secretariat	Date

Comments (if any):

Audit Team Leader **Date**

VOLUNTARY IMO MEMBER STATE AUDIT SCHEME

(Form A)

FINDINGS	
Member State: Hong Kong, China	Audit Period: 8 – 15 March 2010
Department: Hong Kong Marine Department	File No.:
Non-conformity No.:	Observation No.: OB-01
<p>FINDINGS: Observation</p> <p>It was unable to be effectively and clearly demonstrated exactly how the powers of inspection and intervention of Hong Kong Marine Department surveyors are enacted.</p> <p>Objective evidence:</p> <ul style="list-style-type: none"> • Ordinance Cap.413M, section 44 deals with appointments of “Government Surveyors” to enforce the Ordinance. This Ordinance enacts Marpol Annex VI. It was unable to be demonstrated that anyone has been appointed under this provision. • A general power of inspection under Ordinance Cap.313, is given to an ‘authorized officer’ (section 59). It is accepted that this covers the HK MD surveyors. This power however does not seem to extend to intervention (detention), which under Ordinance Cap.313 is only given to the Director (section 12). • No documentation or instruction was able to be provided to clearly reflect the legislative powers of surveyors. 	
<p>APPLICABLE PROVISIONS OF THE AUDIT STANDARD:</p> <p>Code, Part 2, paragraph 27</p> <p><i>The flag State should define and document the responsibilities, authority and interrelation of all personnel who manage, perform and verify work relating to and affecting safety and pollution prevention.</i></p>	
Auditor: A Schwartz	Date: 15 July 2010
Team Leader: A Schwartz	Date: 15 July 2010
Member State: <i>(Signature)</i>	Date Received: 15 July 2010

(Form B)

CORRECTIVE ACTION PLAN AND FOLLOW-UP ACTION				
Member State	Hong Kong, China	Audit Period:	8 – 15 March 2010	
Department:	Marine Department	Auditor:	A Schwartz	
Findings Type:	OBS	No.	01	File No:
Proposed Corrective Action:				
<p>The Marine Department (MD) has sought advice from Department of Justice (DoJ) in respect of the first two objective evidence (correspondence attached for reference) with advice given as :</p>				
<p><u>First objective evidence :</u></p>				
<p>1. ‘Government surveyor’ under Cap.413M has to be appointed by the Director of Marine (DM) and has to be person-specific and Regulation-specific (DoJ’s memo dated 20-9-2010, para. 3).</p>				
<p>2. Appointment of ‘Government Surveyor’ under Cap.413 was completed on 26 November 2010. Attached with this document please find the appointment letters for your reference. Concerned surveyors will be notified of the appointments for acknowledgement and notification record will be filed with the Appointment File (file : MDSD/S 5-30/9).</p>				
<p><u>Second objective evidence :</u></p>				
<p>3. DoJ’s memo dated 29-9-2010 confirms that ‘Authorized officer’ under Cap.313 s.2 is a ‘Public officer of MD of or above the rank of Marine Inspector Class II’. Under the definition of Cap.1 s.3, a MD’s Surveyor of Ships is a public officer and is therefore also the ‘Authorized officer’ under Cap.313.</p>				
<p>4. DoJ’s memo dated 28-9-2010 para. 5 expresses the view that “<i>The power to detain a vessel under Cap.313 s.12(1) may only be exercised by (a) DM or (b) any public officer who has been delegated by DM to exercise the power under s. 58(1)</i>”. According to (b), therefore, a MD’s Surveyor of Ships as a public officer (refers to para. 3 above) does have the power to detain a vessel if being delegated by DM to do so under s.58(1).</p>				
<p>5. Para. 6 of the same DoJ’s memo (28-9-2010) confirms further that any public officer exercising DM’s power under s.12 (to detain a vessel) is deemed to have been delegated by DM under s.58(1) to do so unless the contrary is proved. There is no contrary being proved.</p>				
<p>6. DoJ’s memo dated 27-9-2010 para. 4 expresses also that “<i>Neither s.58(1) nor s.58(2) of Cap.313 requires DM to delegate under s.58(1) in writing....., the public officer who performed or exercised any function duty or power of DM under Cap.313 is deemed to have been so delegated by DM under s.58(1)</i>”. DoJ’s memo dated 20-9-2010 para. 7(c) addresses the same point aforementioned and para. 7(d) also addresses the point that the delegation requires no gazette.</p>				
<p>7. In brief, MD’s Surveyor of Ships as a public officer does have the power to detain vessels</p>				

under Cap.313 s.12(1) as being delegated by DM under s.58(1). Such delegation requires neither in writing nor published in gazette.

8. In conclusion, Surveyors of Ships of MD do have the power to carry out PSC duties to inspect vessels vested by power under Cap.313 s.59(1) and detain vessels under Cap.313 s.12. As such, no corrective action is required.

Proposed Corrective Action for the Third objective evidence (documentation or instruction) :

9. The procedures to update the surveyor appointment list for newly recruited surveyors and conduct annual review of such list will be inserted in the Appointment File (file : MDSD/S 5-30/9). Under the procedures, Executive Officer/S&MPD is responsible for timely updating the list for new surveyors; and the Multi-lateral Policy Division is responsible for conducting an annual review exercise for legitimate appointments, with the first exercise beginning in December 2010. Concerned surveyors being appointed under respective legislation will be notified and records will be documented accordingly. Results of the first annual review exercise, together with the relevant documents, will be forwarded to the Audit Team in 2011 and subsequent yearly records could also be submitted to the Audit Team upon request.

For Action:

Member	Hong Kong, China	
State:	_____	_____
	Name	Date
Copies	to:	<input type="checkbox"/>
<input type="checkbox"/>	_____	_____
	Name	Name
(Date	_____	_____
Received):	Date	Date

Root Cause:

There is a lapse in effecting and documenting the appointments of MD's Surveyors of Ships pursuant to maritime legislation.

Proposed Preventive Action:

Future maritime legislation involving appointments of MD's Surveyors of Ships and appointment of newly recruited surveyors will be effected and documented immediately. Procedures for annual appointment review exercise will be established and the first annual review will be commenced in December 2010.

Action Plan Submitted:			
By _____		Hong Kong, China	
		On _____	
To: Audit Team		A Schwartz	
Leader: _____		IMO Secretariat: _____	
		Name	
		Name	
<input type="checkbox"/> For Review:		<input type="checkbox"/> For Information:	
_____		_____	
Signature		Date	
Signature		Date	
Copies to: <input type="checkbox"/>		<input type="checkbox"/>	
<input type="checkbox"/>		<input type="checkbox"/>	

Action Implemented:	
By _____	On _____

Verification of Effective Implementation:			
<p>Sign off, as appropriate:</p>			
Member State Representative	Date	Audit Team Leader	Date
_____	_____	_____	_____
Relevant Department Head	Date	IMO Secretariat	Date
_____	_____	_____	_____

Comments (if any):	
_____	_____
Audit Team Leader	Date

Annex 1 **Timetable for Voluntary IMO Member State Audit of Hong Kong, China : 6 – 15 March 2010**

Date	Time	Subject	Auditors	MD staff (Designation)		Venue
8 March (Mon.) (Day 1)	0930-1015 hrs.	Opening meeting	Mr. Allan Schwartz (Lead Auditor) Mr. Ajoy Chatterjee (Auditor) Mr. Sukeon An (Auditor)	Mr. Roger Tupper Mr. H. P. Liu Mr. P. F. Chun Mr. Y. K. Lee Mr. T. C. Sin Mr. H. M. Tung Mr. K. F. Chick Mr. K. M. Fung Mr. C. H. Tso Mr. Y. M. Cheng Mr. W. H. Leung Mr. M. Y. Chan Mr. K. C. Ng Mr. S. F. Wong	Director of Marine Deputy Director of Marine Assistant Director / Multi-lateral Policy Assistant Director / Port Control Assistant Director / Planning & Services Assistant Director / Shipping General Manager / Shipping Registry & Seafarers General Manager / Services Chief / Marine Accident Investigation & Shipping Security Policy Chief / Maritime Policy Chief / Technical Policy General Manager / Ship Safety Hydrographer Senior Surveyor / Technical Policy	Conf. Rm. A
	1035-1230 hrs.	Maritime Strategy	Mr. Allan Schwartz (Lead Auditor) Mr. Ajoy Chatterjee (Auditor) Mr. Sukeon An (Auditor)	Mr. Roger Tupper Mr. H. P. Liu Mr. P. F. Chun Mr. Y. K. Lee Mr. T. C. Sin Mr. H. M. Tung Mr. W. H. Leung Mr. S. F. Wong	Director of Marine Deputy Director of Marine Assistant Director / Multi-lateral Policy Assistant Director / Port Control Assistant Director / Planning & Services Assistant Director / Shipping Chief / Technical Policy Senior Surveyor / Technical Policy	Conf. Rm. A

Date	Time	Subject	Auditors	MD staff (Designation)		Venue
	1400 -1645 hrs.	Legislation	Mr. Allan Schwartz (Lead Auditor) Mr. Ajoy Chatterjee (Auditor) Mr. Sukeon An (Auditor)	Mr. Y. M. Cheng Mr. W. H. Leung Mr. S. F. Wong	Chief / Maritime Policy Chief / Technical Policy Senior Surveyor / Technical Policy	Conf. Rm. C

Date	Time	Subject	Auditors	MD staff (Designation)		Venue
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Date	Time	Subject	Auditors	MD staff (Designation)		Venue
9 March (Tue.) (Day 2)	0930-1030 hrs.	SOLAS (Policies)	Mr. Allan Schwartz (Lead Auditor) Mr. Ajoy Chatterjee (Auditor) Mr. Sukeon An (Auditor)	Mr. W. H. Leung Mr. M. Y. Chan Mr. S. F. Wong	Chief / Technical Policy General Manager / Ship Safety Senior Surveyor / Technical Policy Surveyor / Cargo Ships Safety	Ship Safety Branch
	1050-1230 hrs.	SOLAS (Implementation) -II-2, III, IV & V	Mr. Ajoy Chatterjee (Auditor)	Mr. W. H. Leung Mr. M. Y. Chan Mr. F. K. Mok	Chief / Technical Policy General Manager / Ship Safety Senior Surveyor / Passenger Ships Safety Senior Surveyor / Cargo Ships Safety Radio Surveyor	Ship Safety Branch
		- ISM, IMDG, VI & VII	Mr. Sukeon An (Auditor)	Mr. Y. K. Lai Mr. P. K. Yeung	Senior Surveyor / ISM Surveyor / Cargo Ships Safety	Ship Safety Branch
		Recruitment & Training	Mr. Allan Schwartz (Lead Auditor)	Mr. S. M. Tsui	Senior Surveyor / Planning & Training	Conf. Rm. C
	1400-1515 hrs.	Load Lines (Policies & implementation)	Mr. Ajoy Chatterjee (Auditor)	Mr. S. H. Tse Mr. C. C. Choi	Senior Surveyor / Cargo Ships Safety Surveyor / Cargo Ships Safety	Ship Safety Branch
		Tonnage (Policies & implementation)	Mr. Sukeon An (Auditor)	Mr. W. H. Leung	Surveyor / Cargo Ships Safety	Ship Safety Branch
	1535-1645 hrs.	STCW (Policies & implementation)	Mr. Ajoy Chatterjee (Auditor) Mr. Sukeon An (Auditor)	Mr. W. H. Leung Mr. C. H. Tso	Chief / Technical Policy Chief / Marine Accident Investigation & Shipping Security Policy Senior Surveyor / Seafarers' Certification Surveyor / Examiner	Ship Safety Branch
				Mr. M. C. Leung Mr. K. F. Kwan		
	1400-1645 hrs.	MARPOL (Policies & implementation)	Mr. Allan Schwartz (Lead Auditor)	Mr. Y. M. Cheng Mr. M. Y. Chan Mr. P. K. Yeung	Chief / Maritime Policy General Manager / Ship Safety Surveyor / Cargo Ships Safety	Ship Safety Branch

Date	Time	Subject	Auditors	MD staff (Designation)		Venue
10 March (Wed.) (Day 3)	0930-1115 hrs.	Aids to Navigation	Mr. Ajoy Chatterjee (Auditor) Mr. Sukeon An (Auditor)	Mr. L. T. Cheng Mr. K. S. Yip	Senior Marine Officer / Port Logistics Superintendent of Aids to Navigation	Government Dockyard
		Visit to MARPOL reception facility	Mr. Allan Schwartz (Lead Auditor)	Mr. Y. M. Cheng Mr. Vincent Woo Mr. Eric Lam	Chief / Maritime Policy Environmental Protection Officer Site Chief Inspector	Tsing Yi
	1130-1515 hrs.	Hydrographic	Mr. Ajoy Chatterjee (Auditor) Mr. Sukeon An (Auditor)	Mr. K. C. Ng	Hydrographer	Government Dockyard
	1530-1700 hrs.	STCW (Visit to Maritime Services Training Institute - MSTI)	Mr. Ajoy Chatterjee (Auditor) Mr. Sukeon An (Auditor)	Mr. Tony Yeung Mr. Ricky PH Luk Mr. William Wong	Manager Recruitment & Placement Officer Chief Instructor	MSTI
	1130-1530 hrs.	Flag State policies & implementation	Mr. Allan Schwartz (Lead Auditor)	Mr. M. Y. Chan Mr. P. K. Yeung	General Manager / Ship Safety Surveyor / Cargo Ships Safety	Ship Safety Branch
	1545-1715 hrs.	PSC policies & implementation	Mr. Allan Schwartz (Lead Auditor)	Mr. M. Y. Chan Mr. Y. K. Wong Mr. C. Y. Fong Mr. Y. C. Shiu	General Manager / Ship Safety Senior Surveyor / Port State Control Surveyor / Port State Control Surveyor / Port State Control	Ship Safety Branch

Date	Time	Subject	Auditors	MD staff (Designation)		Venue
11 March (Thur.) (Day 4)	0930-1230 hrs.	Vessel Traffic Management System	Mr. Ajoy Chatterjee (Auditor) Mr. Sukeon An (Auditor)	Mr. W. C. Tse	Marine Officer / Quality Assurance	Macau Ferry Terminal Outer Pier
	1400-1630 hrs.	Search & Rescue	Mr. Ajoy Chatterjee (Auditor) Mr. Sukeon An (Auditor)	Mr. K. M. Leu Mr. L. K. Law	Marine Officer / Maritime Rescue Co-ordination Centre Marine Officer / Vessel Traffic Centre	Macau Ferry Terminal Outer Pier
	0930-1230 hrs.	Flag State & port State implementation	Mr. Allan Schwartz (Lead Auditor)	Mr. M. Y. Chan Mr. Y. K. Li Mr. S. H. Tse Mr. Y. K. Wong Mr. Y. K. Lai Mr. Q. Shi Mr. C. Y. Fong Mr. Y. C. Shiu	General Manager / Ship Safety Senior Surveyor / Security & Quality Assurance Senior Surveyor / Cargo Ships Safety Senior Surveyor / Port State Control Senior Surveyor / ISM Surveyor / Cargo Ships Safety Surveyor / Port State Control Surveyor / Port State Control	Ship Safety Branch
	1400-1645 hrs.	RO monitoring	Mr. Allan Schwartz (Lead Auditor)	Mr. M. Y. Chan Mr. Y. K. Li Mr. S. H. Tse Mr. S. M. Tsui Mr. P. K. Yeung Mr. K. L. Liu	General Manager / Ship Safety Senior Surveyor / Security & Quality Assurance Senior Surveyor / Cargo Ships Safety Senior Surveyor / Planning & Training Surveyor / Cargo Ships Safety Surveyor / Security & Quality Assurance	Ship Safety Branch

Date	Time	Subject	Auditors	MD staff (Designation)		Venue
12 March (Fri.) (Day 5)	0930-1030 hrs.	IMO reporting	Mr. Allan Schwartz (Lead Auditor)	Mr. S. M. Tsui	Senior Surveyor / Planning & Training	Conf. Rm. C
		Casualty Investigation	Mr. Ajoy Chatterjee (Auditor) Mr. Sukeon An (Auditor)	Mr. C. H. Tso Mr. W. H. Ho	Chief / Marine Accident Investigation & Shipping Security Policy Senior Surveyor / Marine Accident Investigation	C/MAISSP's office
	1045-1500 hrs.	Visit to Pollution Control Unit (operational response and enforcement)	Mr. Allan Schwartz (Lead Auditor) Chief / Marine Accident Investigation & Shipping Security Policy	Mr. L. T. Cheng Mr. K. K. Wong	Senior Marine Officer / Port Logistics Marine Officer / Pollution Control Unit	Pollution Control Unit

Date	Time	Subject	Auditors	MD staff (Designation)		Venue
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Date	Time	Subject	Auditors	MD staff (Designation)		Venue
15 March (Mon.) (Day 6)	0930-1200 hrs.	Pre-closing discussion & Closing Meeting	Mr. Allan Schwartz (Lead Auditor) Mr. Ajoy Chatterjee (Auditor) Mr. Sukeon An (Auditor)	Mr. Roger Tupper Mr. H. P. Liu Mr. P. F. Chun Mr. Y. K. Lee Mr. T. C. Sin Mr. H. M. Tung Mr. K. F. Chick Mr. S. M. Chung Mr. K. M. Fung Mr. C. H. Tso Mr. Y. M. Cheng Mr. W. H. Leung Mr. M. Y. Chan Mr. K. C. Ng Mr. S. F. Wong	Director of Marine Deputy Director of Marine Assistant Director / Multi-lateral Policy Assistant Director / Port Control Assistant Director / Planning & Services Assistant Director / Shipping General Manager / Shipping Registry & Seafarers General Manager / Vessel Traffic Services General Manager / Services Chief / Marine Accident Investigation & Shipping Security Policy Chief / Maritime Policy Chief / Technical Policy General Manager / Ship Safety Hydrographer Senior Surveyor / Technical Policy	Conf. Rm. A

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