

# DRAFT

## Notes of 4th Meeting of Hong Kong Fleet Operation Advisory Committee (HKFOAC)

Date : 3 January 2020 (Friday)  
Time : 3:00 p.m. to 5:15 p.m.  
Venue : Conference Room A, Marine Department Headquarters, 24/F,  
Harbour Building

<b>Chairman</b>	Mr. WONG Sai-fat	Deputy Director, Marine Department
<b>Members</b>	Mr. Martin CRESSWELL	The Hong Kong Shipowners Association Limited
	Capt. LI Chi-wai	Hong Kong Seamen's Union
	Capt. LAU Mang-tak	The Merchant Navy Officers' Guild - Hong Kong
	Mr. LAI Ming-hong	Amalgamated Union of Seafarers, Hong Kong
	Mr. AU HO-wing, Johnny	Pacific International Lines Pte Ltd.
	Capt. ZHOU Jian-feng	Wah Kwong Maritime Transport Holdings Limited
	Ms. Tracy KOO	Valles Steamship Company Limited
	Capt. FENG Zhen	Ocean Longevity Shipping & Management Co., Ltd.
	Mr. Vikram DHINGRA	Pacific Basin Shipping (HK) Limited
	Capt. Pradeep CHAWLA	Anglo-Eastern Ship Management Ltd.
	Mr. SHUM Yee-hong	Goldbeam International Limited
	Mr. Laxman KUMAR	Fleet Management Ltd.
	Capt. LAM Ming-fung, Lothair	Parakou Shipmanagement Ptd Limited
Mr. CHAN Carson, Roy	Stephenson Harwood	
Mr. Martin ROWE	Clarkson Platou Asia Ltd.	
Dr. LEE Wing, Stephanie	The Hong Kong Polytechnic University	
<b>In-attendance</b>	Mr. Peter WONG	Deputy Law Officer (Treaties & Law), Department of Justice
	Ms. Lorraine CHAN	Deputy Principal Government Counsel (Treaties & Law), Department of Justice

	Mr. Eric YUEN	Government Counsel (Treaties & Law), Department of Justice
	Mr. LI Lian-jun	Hong Kong Maritime Law Association
	Mr. LI Gang	COSCO (Hong Kong) Shipping Co., Ltd. (stand-in for Mr. CHEN Yan)
	Capt. Gautam RAMASWAMY	The Hong Kong Shipowners Association
<b>MD officials</b>	Mr. CHOI Chi-chuen	Assistant Director/ Multi-lateral Policy
	Mr. SHI Qiang	Assistant Director/ Shipping
	Mr. LIU Chiu-fai, Barry	Chief/ Technical Policy
	Mr. CHAN See-yin	General Manager/ Ship Safety Branch
	Mr. CHAN Ming-yau	General Manager/ Ship Registration & Seafarers' Branch
	Mr. HO Chi-wing, Nelson	Senior Surveyor/ Planning & Training
<b>Absent with Apology</b>	Mr. KAM Dik-chiu, Dick	Bureau Veritas
	Miss Catherine YEN	Ernest & Young (CPA Firm)
<b>Secretary</b>	Ms Jennifer LAM	Executive Officer (Shipping & Multi-lateral Policy Division)

**The Chairman** welcomed all attendees of the meeting.

2. Since this was the first meeting of the 2019-21 term, he introduced those newly appointed members who attended the meeting for the first time. He highlighted that representatives from the Department of Justice (“DoJ”) and Mr. LI Lian-jun from the Hong Kong Maritime Law Association (“HKMLA”) had been invited to attend the meeting to brief members on the work of the United Nations Commission on International Trade Law (“UNCITRAL”) Working Group VI (Judicial Sale of Ships) (“WG VI”).

### **Agenda Item 1: Endorsement of Notes of Last Meeting (10.12.2018)**

3. The Secretary reported that the draft of last meeting notes had been circulated to members prior the meeting and no comment was received. **The Chairman** invited the floor to give comments.

4. Since Members had no objection, **the Chairman** endorsed the notes of last meeting.

**Agenda Item 2: Presentation on Judicial Sale of Ships (HKFOAC Paper No. 9/2019)** [*presented by Mr. Peter Wong from DoJ and Mr. LI Lian-jun from HKMLA*]

5. **Mr. Peter WONG from DoJ** referred to HKFOAC Paper No. 9/2019 which had already distributed to members prior to the meeting. The paper highlighted the progress of discussion in the UNCITRAL WG VI on Judicial Sale of Ships on four fundamental issues (namely, (i) form of instrument; (ii) geographic scope; (iii) substantive scope; and (iv) “qualified” judicial sale) raised by UNCITRAL in the first revision of the draft instrument (“Beijing Draft”).

6. For the *form of instrument*, while the 35<sup>th</sup> session of the WG VI agreed that it would be premature to consider the form of any eventual instrument (e.g. treaty or model law), there were views that a treaty was the best way to achieve the various goals of the instrument. In case where the Beijing Draft eventually took the form of a treaty, under Article 153 of the Basic Law, China as becoming a party would seek views of the Hong Kong SAR Government if the treaty would be extended to Hong Kong. For *geographic scope*, no decision had been taken as to whether the instrument, if it took the form of a treaty, would apply to judicial sales conducted in a non-State Party. Some proponents argued that the instrument should adopt a wider approach so as to maximize its reach, and that Article 9 of the original Beijing Draft offered sufficient protection (by way of reservation). For *substantive scope*, two options were available. Under Option A, the recognition regime under the instrument applied only to judicial sales for which clean title had *already* been conferred on the purchaser under the national law of the State of judicial sale. Under Option B, the recognition regime applied more broadly to mandate that all judicial sales should confer clean title. During the 36<sup>th</sup> session of WG VI, there was wide agreement to adopt Option A. For “qualified” judicial sales, the key issue was whether the instrument should accommodate judicial sales for which clean title was not conferred under national law. Some worried that introducing a qualified title into the instrument might affect the value of the certificate of judicial sale issued under article 5 and the effectiveness of the recognition regime under the instrument. During the 36<sup>th</sup> session, WG VI preferred approach was that it would not be necessary for the instrument to accommodate “qualified” judicial sales and preservation of mortgages and charges “assumed by the purchaser”.

7. **Mr. Peter WONG from DoJ** reported that, taking into account the discussion at the 36<sup>th</sup> session of WG VI, UNCITRAL Secretariat was preparing the Second Revision of the Beijing Draft for consideration at the upcoming 37<sup>th</sup> session

from 20 – 24 April 2020 in New York. WG VI 38<sup>th</sup> session was tentatively scheduled for 14 – 18 December 2020 in Vienna.

8. **Mr. Martin CRESSWELL from HKSOA** enquired that in case the instrument took the form of a treaty, whether all countries in the world were mandated to comply with its requirements. **Mr. Peter WONG from DoJ** replied that whether the treaty had a wide application depended on the number of Contracting Parties, especially those key maritime countries. All Contracting Parties would be bound by the treaty and were obliged to recognise judicial sales that took place in other Contracting Parties. A model law was different from a treaty in that a model law was created as a suggested pattern for law-makers in jurisdictions to consider adopting as part of their domestic legislation. In other words, the adoption of a model law was a voluntary and unilateral arrangement undertaken by an individual jurisdiction.

9. **Mr. CHAN Carson, Roy from Stephenson Harwood** pointed out that Hong Kong possessed a competitive edge in providing legal services for ship arrests as it had a very well-structured judicial sale of ships system even in the absence of the instrument. He enquired whether Hong Kong could still preserve its comparative advantage after the implementation of the instrument. **Mr. Peter WONG from DoJ** responded that the implementation of the instrument could facilitate other countries to recognise judicial sales that might be conducted in Hong Kong after the relevant arrest. As such, the instrument would be beneficial to Hong Kong's legal service. **Mr. LI Lian-jun from HKMLA** opined that the benefits of adopting the new instrument in Hong Kong would outweigh other unfavourable factors as it could facilitate mutual recognition of judicial sales of ships among Contracting Parties.

10. **The Chairman** noted no other comments from the floor with regard to the HKFOAC Paper No. 9/2019.

[Remarks: Mr. Peter WONG, Ms. Lorraine CHAN and Mr. Eric YUEN from DOJ, and Mr. LI Lian-jun from HKMLA left the meeting at around 3:35 pm.]

### **Agenda Item 3: Matters Arising**

#### ***(i) Issue of Electronic Certificates***

11. **Mr. SHI Qiang from MD** reported that with regards to the development of electronic certificates, the Marine Department had revamped its internal information system to accommodate issuance and authentication of electronic certificate of ship

registry. Systems for issuing other e-certificates were also being developed. **Mr. Martin CRESSWELL from HKSOA** enquired about the legislative progress. He was being advised that respective legislative amendments would be introduced to Legislative Council in 2020-21 legislative year.

12. **Capt. ZHOU Jian-feng from Wah Kwong Maritime Transport Holdings Limited** enquired if e-certificates issued by Hong Kong would be globally recognised by other ports. **Mr. SHI Qiang from MD** conveyed that IMO had set forth guidelines for member States to accommodate the use of electronic trading certificates at their ports. **Mr. CHOI Chi-chuen from MD** supplemented that a RO website had enlisted those administrations not accepting electronic certificates. **Mr. Laxman KUMAR from Fleet Management Ltd.** mentioned that at present, there were over 175 countries accepting electronic certificates.

*(ii) Developing of Ship Registration Guidelines*

13. **Mr. CHAN Ming-yau from MD** reported that the Hong Kong Shipping Registry published the ship registration guidelines on 4.10.2019 and the guidelines had been placed on the internet. The guidelines outlined the general requirements and procedures of ship registration. It also mentioned some areas that needed particular attention, *for example notarisation and translation executive overseas*. The Chinese version of the guidelines would be ready by Q1 of 2020.

*(iii) Strengthening the Services at the Economic and Trade Offices*

14. **Mr. CHAN Ming-yau from MD** mentioned that in 2017 and 2018, a total of six (6) Economic and Trade Offices, *including Beijing, Shanghai, Tokyo, Shenyang, Singapore and Jinan*, had provided delivery of Certificate of Registry (CoR) envelope services. As at the meeting date, a total of 87 delivery services was completed. **Mr. SHI Qiang from MD** supplemented that two Regional Desk Offices (RDs) at London and Shanghai were opened in December 2019 and January 2020 respectively.

*(iv) Detention of Hong Kong Registered Ships and Safety Seminars*

15. **Mr. CHAN See-yin from MD** reported that the port State control (PSC) detention figures of Hong Kong ships in 2018 and 2019 were 45 and 48 respectively. Whilst the detention figure of 2019 was comparative the same as that of 2018, however, he would like to draw members' attention with respect to the growing number of Hong Kong ship detention under Paris MOU. The most common

detainable deficiencies were related to fire safety and life-saving appliances. On the other hand, some PSCs had placed more emphasis on the compliance of Maritime Labour Convention (MLC), in particular to crew wages.

16. He added that in order to equip ship owners and ship management companies with the latest information pertaining to the safety of ships, a series of safety seminars would be arranged in 2020. Four sessions had already been planned for taking place in Hong Kong, Singapore Shanghai and Dalian in February 2020. Invitations would be sent out in due course.

17. **Mr. Pradeep CHAWLA from Anglo-Eastern Ship Management Ltd.** suggested MD to consider to invite PSCOs from other jurisdictions to give sharing in the PSC safety seminars. This could facilitate ship owners and ship management companies to understand the inspection standard of different countries. **The Chairman** replied that MD had experience to invite other PSCOs, i.e. Australia, China and Indonesia, to give presentations in safety seminars organised by MD. **Mr. SHI Qiang from MD** supplemented that based on past experience, some ship companies expressed that they would be reluctant to raise questions if PSCOs from other countries were in the safety seminars. MD was therefore preferred to invite PSCOs from other MOUs to perform sharing in a separate occasion. He highlighted that PSCC 33 would be hosted in Hong Kong in 2022 and MD would invite other port State authorities to join the event by that time.

18. **Mr. Pradeep CHAWLA from Anglo-Eastern Ship Management Ltd.** agreed that MD's safety seminars should be confined to MD and ship Owners/Managers, and suggested MD to consider sharing of the statistics of PSC inspections for members' reference after the meeting.

***(v) New Arrangement of issuing Nairobi Convention Certificates by Shenzhen MSA***

19. **Mr. SHI Qiang from MD** reported that MD had secured assistance from Shenzhen MSA to issue Wreck Removal Certificates (WRC) for Hong Kong registered ships. This year, MD had invited early bird applications to encourage ship owners and ship management companies to submit early applications to avoid last minute rush as well as ensuring that the certificates could be collected in Hong Kong. Since the Chinese New Year holidays of this year was in mid-January 2020, Mr. SHI thus sought assistance from HKSOA to spread the message to their members.

***(vi) Hong Kong Convention***

20. **Mr. HO Chi-wing, Nelson from MD** reported that at present, there were 15 IMO member States ratified the Hong Kong Convention, representing approximately 30.21% of the world's merchant shipping gross tonnage. To meet the three entry-into-force criteria, about 10% more world shipping tonnage would be required which would also be enough to meet the recycling capacity threshold. MD had already commenced the respective law-drafting exercise.

21. **Mr. Martin CRESSWELL from the Hong Kong Shipowners Association Limited** shared his views on the latest development of the Hong Kong Convention. He highlighted that how soon the Convention would come into force would depend on the progress of ratification of major ship recycling countries, for instance India, Bangladesh and China. He expressed wishes for China to consider ratifying the Convention.

22. **Mr. Martin ROWE from Clarkson Platou Asia Ltd.** supplemented that the Ministry of Transport in China was aware of the situation. **The Chairman** noted members' concern on the ratification development and MD would keep in view of the progress.

***(vii) IMO's 2020 Global Sulphur Cap***

23. **Mr. HO Chi-wing, Nelson from MD** reported that IMO 2020 global sulphur cap was implemented on 1.1.2020. MD had promulgated the MSIN No. 17/2019 to illustrate the guidelines for ensuring consistent implementation of the 0.5% sulphur limit under MARPOL Annex VI. To facilitate ship owners to cope with the new sulphur cap, a register of local fuel oil suppliers had been maintained and posted on MD's website for easy reference. The enlisted local fuel oil suppliers had confirmed their compliance with MARPOL Annex VI and that their supplies would meet the demands of shipowners.

24. **Mr. Martin CRESSWELL from the Hong Kong Shipowners Association Limited** suggested that MD might follow examples from other jurisdictions, like Singapore, Germany and Netherlands, to establish a licensing system for qualified fuel oil suppliers. **Mr. CHOI Chi-chuen from MD** responded that it was not a mandatory IMO requirement for a maritime administration to establish a licensing system on fuel oil suppliers. In Hong Kong, legislation was in place to safeguard the quality of fuel oil sold locally. So far, MD did not receive any complaints on fuel oil quality supplied by operators in Hong Kong.

25. **Mr. Laxman KUMAR from Fleet Management Limited** conveyed that there was no massive complaint on non-compliant fuel oil. Fuel suppliers would usually present the documentary proof on the fuel oil contents to ship owners during purchase. He enquired if PSC officers would conduct inspections on fuel contents on lifeboats on board and whether ships were required to present legal document during PSC inspections. He also raised questions on whether or not ships could apply for dispensation in this regard.

26. **Mr. CHOI Chi-chuen from MD** responded that MARPOL Annex VI stipulated that the new sulphur cap requirement was applicable on all equipment on board including emergency equipment, i.e. lifeboats and emergency generators. Also that the Convention did not provide any provision for applying for dispensation on using non-compliant fuel oil. Therefore, all Hong Kong registered ships were mandated to switch to low sulphur content fuel starting from 1.1.2020 onwards.

#### **Agenda Item 4: Legislation Work**

27. **Mr. LIU Chiu-fai, Barry from MD** tabled two summary tables on legislative exercises conducted in 2019-20 and HKFOAC papers issued in 2019 for members' reference. He highlighted that a number of new legislative amendment exercises would be conducted in 2020, including 2016 and 2018 amendments to MLC (Cap. 478AF), carriage ban on non-compliant fuel oil (Cap. 413P), use of electronic record books (Cap. 413A and 413O) and amendments to the requirements of EEDI for ice strengthened ships (Cap. 413P). He would send out an updated table of legislative exercises to members through the Secretary after the meeting.

#### **Agenda Item 5: Development of the New Flag State Quality Control Mechanism (HKFOAC Paper No. 1/2020)**

28. **Mr. CHAN See-yin from MD** tabled HKFOAC No. 1/2020 on the proposal of a new Flag State Quality Control (FSQC) mechanism to streamline and enhance the regulatory control of Hong Kong ships. As of December 2019, there were about 2,600 ships flying Hong Kong flag, amounting to a total of 128 million gross tonnage. Upon analysis of past PSC detention cases, MD noted that most deficiencies were caused by lack of systematic maintenance and that the root causes varied from manager to manager.

29. Under the new FSQC mechanism, a number of ships would be identified for Flag State Audits based on MD's risk assessment and analysis on each individual ships and a small number of ships by random. The analysis would be made with

reference to the ship's PSC performance in the immediate past three years and the past records of ports of calls. Instead of deploying a Government Surveyor from MD, surveyors from a Recognized Organisation (RO) would be appointed by the Manager to carry out an extended inspection with the inspection scope specified by MD. Thereafter and within 6 months, MD Government Surveyors would carry out an on-board Flag State Audit (FSA). While RO usually had offices and surveyors working across the globe, it was expected that the inspection costs shouldered by ship owners would be lower under the new FSQC arrangement. For the on-board FSA to be performed by Government Surveyors, it would be preferably carried out at ports around the established RDs and cost free to Owner/Manager.

**30. Capt. Pradeep CHAWLA from Anglo-Eastern Ship Management Ltd.** appreciated the enhancement of the FSQC mechanism. He suggested prioritizing and targeting those ships with PSC detention records for FSA. Viewing that surveyors in RDs would be deployed to carry out FSAs, he wished MD could disseminate the relevant statistics for members' reference.

**31. Mr. AU HO-wing, Johnny from Pacific International Lines Pte Ltd.** welcomed the initiative as the new mechanism could proactively identify and target ships with high risks for inspections. Moreover, the new arrangement would help ship owners to save costs.

**32. The Chairman** supplemented that in the past, due to geographic limitation and time constraints, MD might not be able to offer immediate assistance in cases of PSC ship detention. With the enhanced FSQC mechanism and RDs setting up, MD could deploy resources to carry out pre-arrival audit to better prepare high risks ships for PSC inspections. Moreover, the delegation of DM's power to the heads of RDs in the pipeline could also enable round the clock supporting services provided to Owner/Manager such as granting of exemptions.

#### **Agenda Item 6: Issues raised by HKSOA**

##### ***(i) Issues faced by Hong Kong registered vessels in Mainland ports***

**33. Capt. Gautam RAMASWAMY from the Hong Kong Shipowners Association Limited** conveyed that some Chinese ports did not accept rating certificates of officers issued by Hong Kong and requested those ships to apply for dispensation certificates. HKSOA had reflected the issue to China MSA and was being informed that the situation only happened in specific ports.

34. **Mr. SHI Qiang from MD** replied that MD had communicated with Mainland authorities to clarify the procedures. MD could issue a standard letter to ships in question which explicitly stated that the officers holding Certificates of Competency were accepted to perform the duty of relevant ratings on board Hong Kong registered ships.

35. **Mr. Laxman KUMAR from Fleet Management Limited** pointed that some China ports declining rating certificates might be due to the underpayment of crew wages. **The Chairman** supplemented that double-booking was not allowed under MLC as crew should be paid according to the crew agreement.

36. **Capt. Gautam RAMASWAMY from the Hong Kong Shipowners Association Limited** pointed out that some ships were being detained in China ports as the regional flag hoisted on board ship was larger than the national flag. He also mentioned that some ships had encountered difficulty in port clearance as their trading certificates had stated “Hong Kong” as the flag State.

37. **Mr. SHI Qiang from MD** supplemented that under Hong Kong law, whenever national flag and regional flag were displayed at the same time, or displayed side by side, the latter one was to be of a smaller size than the former one. For the certificates, MD will use “Hong Kong SAR, Peoples’ Republic of China” as the issuance authority. MD would also remind ROs to ensure their trading certificates and documentation (like stability booklet) adopted the same wordings.

*(ii) Security Situation in the Gulf of Guinea*

38. **Capt. Gautam RAMASWAMY from the Hong Kong Shipowners Association Limited** conveyed that there had been increased number of robbery and piracy cases reported in the area of Gulf of Guinea and he enquired if Hong Kong would issue guidance notes to ships entering nearby waters. **Capt. Pradeep CHAWLA from Anglo-Eastern Ship Management Ltd.** noted that the situation was becoming alarming and should be voiced out at international level, i.e. IMO meetings.

39. **Mr. Martin CRESSWELL from the Hong Kong Shipowners Association Limited** supplemented that the Secretary General of IMO had met the Ambassador of Nigeria in September 2019 to discuss the security issues in the Gulf of Guinea. The meeting decided to permit naval forces to guard vessels entering the gulf area. **Capt. Pradeep CHAWLA from Anglo-Eastern Ship Management Ltd.** addressed that the situation did not improve a lot even with the intervention of the Nigerian government and he suggested to lobby support from the Chinese

government to solve the issue from diplomatic perspective.

40. **The Chairman** noted members' concern and concluded that MD would relay the message to the Chinese authority as appropriate.

#### **Agenda Item 7: A.O.B**

##### ***(i) Further Reduction in Sulphur Emission Initiatives***

41. **Mr. Martin CRESSWELL from the Hong Kong Shipowners Association Limited** enquired if the Hong Kong government had any plan to follow the trend of tightening sulphur content of fuel oil used by ocean-going vessels from 0.5% to 0.1%.

42. **Mr. CHOI Chi-chuen from MD** expressed that the Environmental Protection Department (EPD) would take the lead to keep abreast of the domestic ECA requirement on sulphur content of fuel oil and would pursue legislative amendment exercises if necessary.

##### ***(ii) New Pilotage Arrangement at Mirs Bay***

43. **Mr. Martin CRESSWELL from the Hong Kong Shipowners Association Limited** mentioned that MD had established three pilot boarding stations in Mirs Bay, i.e. *Crooked Island, Ping Chau and Shek Ngau Chau* and that the new arrangement was effected on 1.1.2020. He enquired about the progress of implementation.

44. **The Chairman** replied that the new arrangement had been implemented smoothly since 1.1.2020. There was no reported case on delay of ship's voyage.

##### ***(iii) Vessels Navigation at Tsing Ma Bridge***

45. **Mr. Martin CRESSWELL from the Hong Kong Shipowners Association Limited** enquired about the progress of legislative amendments with respect to Tsing Ma Bridge.

46. **The Chairman** responded that MD was working with the Highways Department to prepare for the legislative amendment exercise. MD would keep in view of the progress and update members when appropriate.

47. There being no other business, the meeting was adjourned at 5:15 p.m. The date of the next meeting would be announced in due course.

**Marine Department**  
**March 2020**