



**IMO**

**International Maritime Law Institute**

*Serving the Rule of International Maritime Law*

**The Seafarer Law of the People's Republic of China**

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**DRAFTING PROJECT**

SUBMITTED IN PARTIAL FULFILLMENT OF THE REQUIREMENTS  
FOR THE AWARD OF A MASTER OF LAW (LLM) DEGREE  
IN INTERNATIONAL MARITIME LAW  
AT THE IMO INTERNATIONAL MARITIME LAW INSTITUTE

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**Academic Year 2006-2007**

# **Explanatory Note**

## **I. Current China's legal and administrative protection to the seafarer**

China is the third largest country in the world, with a huge population. It has a coastline extending more than 14,500 km and over 5,400 islands. China also has one of the world's busiest inland waterways systems. Shipping Industry plays a very important role in Chinese economic development. In 2005, China's foreign trade shipping amount was about 1.25 billion tons. At the end of 2005, there were about 2600 seagoing ships with over 100 gross tonnage on the Chinese register; the total cargo capacity was about 57 million tonnage. China is one of largest register in the world. The number of water workers is approximately 1.2 million, of whom approximately 400,000 are seafarers.

Notwithstanding the high number of seafarers, now there are no specific laws in China governing the legal relations between seafarers and employers based in China. The Labour Law of the People's Republic of China (the Labour Law), which governs labour relations of workers generally, applies to Chinese seafarers on Chinese flag ships. The Maritime Code of the PRC (the Maritime Code), which governs

commercial relations concerning seagoing vessels and transportation by sea, discusses 'Crew' in Chapter III thereof. Article 34 of the Maritime Code provides: *“In the absence of specific stipulations in this Code as regards the employment of the crew as well as their labour related rights and obligations, the provisions of the relevant laws and administrative rules and regulations shall apply”*. Provisions with respect to the legal rights of seafarers are scattered throughout a large number of relevant administrative rules promulgated by the Ministry of Labour and Social Security (on general labour relations) and regulations of the Ministry of Communications (specifically on seafarers). In addition to domestic legislation, China has acceded to a number of international Conventions.

The main reason lies as follows. Until the beginning of 1995, when the Labour Law took effect, there was no effective protection of employee rights under Chinese law. As a socialist country, workers worked for themselves within State-owned units or enterprises, so there was no need to have any labour contract. The economy was controlled by the State, which was responsible for directly allotting a worker to an enterprise to do a specific job. Individuals were subordinate to the collective, and the collective was subordinate to the State. Even-thing was planned including recruitment, and 'once recruited, always recruited'. In this system, the

labour relationship was akin to a social relationship. In the late 1970s, with the onset of the open door policy to encourage foreign and private investment, China began its transformation to a market economy system. The role of the State diminished and a new relationship had to be defined between the government and the enterprises, and between the enterprises and their employees. It was recognized that there was no law in existence protecting workers in the newly emerged non-State-owned enterprises. The government responded with the Labour Law. This created the concept of a labour contract which was a wholly new idea. The Labour Law is nevertheless very comprehensive and covers many principles of the labour relationship, including maritime labour relationship.

## **II. The newly adopted Maritime Labour Convention**

The *Maritime Labour Convention, 2006* was adopted by the 94th International Labour Conference at a maritime session in Geneva in February 2006. The Convention covers conditions of employment, hours of work and rest, accommodation, recreational facilities, food and catering, health protection, medical care, welfare and social security protection for seafarers, as well as the regulation of recruitment and placement services and flag State inspection systems.

The new Convention has been described by the Director-General of the International Labour Office, Dr. Juan Somavia, as “making labour history.” It has taken the ILO’s treaty-making activity since 1920 one stage further, in the sense that it reflects an international tripartite consensus on the standards needed to achieve “fair globalization” in the maritime sector. It consists of agreed minimum standards to help secure conditions of decent work for workers and to also ensure fair competition among employers.

The *Maritime Labour Convention, 2006* is intended to complement the three key IMO Conventions and to become the “fourth pillar” of the international maritime regulatory regime for “quality shipping”. The three key IMO Conventions are, the International Convention for the Safety of Life at Sea(SOLAS); the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers(STCW), and; the International Convention for the Prevention of Pollution from Ships(MARPOL). Collectively, the three IMO Conventions address the technical aspects of ship design, construction, equipment and operation from the points of view of safety, security and the protection of the marine environment, as well as the education and training of seafarers and the competencies that they should be required to demonstrate before they are taken on the various shipboard positions.

The new Convention was principally designed to meet the serious concerns expressed by both the seafarer and shipowner communities, and later endorsed by Governments. These innovations in substance and in process reflect a renewed vitality and commitment in the ILO which will be of broader interest to the international community. They signal a vigor and interest in seeking new ways to encourage the use of international law and international standards to balance the broader economic and social changes affecting most sectors in an era of increased globalization. The new Convention will complement the key IMO technical conventions perfectly, by introducing the social element necessary to ensure decent working conditions for seafarers and catering for such things as prevention of accidents; health protection and medical care; seafarers' hours of work and the manning of ships; and the repatriation of seafarers.

### **III. The Chinese Government is taking into the consideration of ratify the 2006 Maritime Labour Convention, so there is a need to draft the Seafarer Law in China**

Seafaring is an occupation that is no less dangerous and challenging than it ever was. Seafarers today, however, now have to face issues of increased loneliness, with smaller crews from different nationalities,

isolation - resulting from the rapid turnaround that modern technology and cargo handling techniques allow - and, more recently, the necessary pressures of security. It is no exaggeration to say that manning, training and all the other aspects of the human element in shipping are central to many of the issues which now face the shipping industry. Safety, security, shipping's environmental credentials and, indeed, the whole future sustainability of the industry are all dependent to a great extent on the cultivation of a capable and effective manpower resource.

Until recently, much of the regulatory process within IMO was focused on developing measures which sought to improve what might be termed the hardware of shipping - the ships themselves, the way they are built, the way they are equipped, the way they are maintained. But, in looking at how improvements in the performance of shipping can best be achieved in this new century, IMO has taken the conscious decision to concentrate its efforts much more strongly on the human element. This "shifting the emphasis onto people" has become enshrined as one of the Organization's guiding principles for IMO in the new Millennium. All seafarers have a right to the occupational safety and the assurance of decent working conditions. Quality seafarers, in particular, will only be attracted to the shipping industry in the first place if they can feel confident of finding working conditions appropriate to a modern,

high-technology, 21st century industry.

Moreover, as well as being wholly desirable, indeed necessary, outcomes in their own right, these things can also have a direct impact on the safety and security of shipping and, therefore, on the protection of the marine environment.

The Chinese government has always cared for and paid attention to undertakings for the seafarer. For years, the state has made great efforts to promote the working ability and knowledge of the seafarer, and established a comprehensive training, test and certification system to fulfill China's responsibilities under STCW Convention. The Chinese government has always guaranteed the legitimate rights and interests of the seafarer and taken effective measures to explore a development mode of undertakings for the seafarer that suits.

In 2004, Chinese President Hun Jintao announced a new "people-centered" development strategy and formulated a "scientific" concept of sustainable and "harmonious" development. President Hu demanded a radical change in China's growth model from one characterised by "high input, high consumption, high pollution, and low efficiency" to a new approach, based on "high science and technology



contents, good economic benefit, low resource consumption, less environmental pollution, and full exploitation of human resource advantages.” Following this great strategy, especially in recent years, the Chinese government has implemented the outlook of scientific development in an all-round way and positively meets the challenge posed by the seafarer. It has considered undertakings for the seafarer an important part of balanced social and economic development as well as of the building of a harmonious society, and has adopted economic, legal and administrative measures to constantly promote the development of undertakings for the seafarer.

It was in this context that China was delighted to welcome the adoption of this new, consolidated Convention dealing specifically with seafarers' working conditions and terms of employment. China is preparing for ratification of this Convention in order to protect the rights and interests of Chinese seafarer. To fulfill the obligations provided in the Convention, China needs a Seafarer Law to translate the Convention into domestic law. With this special Seafarer Law, the Seafarer's legitimate rights and interests can be guaranteed concisely and stably. On the other hand, after the entry into force and wide application of this Convention, the Chinese Seafarer working onboard foreign vessels can also get a globally unified protection.

# **The Seafarer Law of the People's Republic of China**

## **CHAPTER I GENERAL PROVISIONS**

### ***Article 1 Purpose***

This Law is formulated for the purpose of securing the right of all seafarers to decent employment, protecting the rights and interests of the seafarers and improving their working abilities and conditions.

### ***Article 2 Definition***

1. For the purpose of this Law and unless provided otherwise in particular provisions, the term:

(a) *competent authority* means the State competent authority being in charge of maritime labour affairs.

(b) *gross tonnage* means the gross tonnage calculated in accordance with the tonnage measurement regulations contained in Annex I to the International Convention on Tonnage Measurement of Ships, 1969, or any successor Convention; for ships covered by the tonnage measurement interim scheme adopted by the International Maritime Organization, the gross tonnage is that which is included in the REMARKS column of the International Tonnage Certificate (1969);

(d)*seafarer* means any person who is employed or engaged or works in any capacity on board a ship to which this Convention applies;

(g)*seafarers' employment agreement* includes both a contract of employment and articles of agreement;

(h)*seafarer recruitment and placement service* means any person, company, institution, agency or other organization, in the public or the private sector, which is engaged in recruiting seafarers on behalf of shipowners or placing seafarers with shipowners;

(i)*ship* means a ship other than one which navigates exclusively in inland waters or waters within, or closely adjacent to, sheltered waters or areas where port regulations apply;

(j)*shipowner* means the owner of the ship or another organization or person, such as the manager, agent or bareboat charterer, who has assumed the responsibility for the operation of the ship from the owner and who, on assuming such responsibility, has agreed to take over the duties and responsibilities imposed on shipowners in accordance with this Law, regardless of whether any other organization or persons fulfill certain of the duties or responsibilities on behalf of the shipowner.

2. Except as expressly provided otherwise, this Law applies to all seafarers.

3. Except as expressly provided otherwise, this Law applies to all ships, whether publicly or privately owned, ordinarily engaged in commercial activities, other than ships engaged in fishing or in similar pursuits and ships of traditional build such as dhows and junks. This Law does not apply to warships or naval auxiliaries.

### *Article 3 Jurisdiction*

1. The State shall effectively exercise its jurisdiction and control over ships that fly Chinese flag by establishing a system for ensuring compliance with the requirements of this Law, including regular inspections, reporting, monitoring and legal proceedings under the applicable laws.
2. The State shall ensure that ships that fly its flag carry a maritime labour certificate and a declaration of maritime labour compliance as required by this Law.
3. The State may, in accordance with international law, inspect a ship of foreign flag, when the ship is in one of its ports, to determine whether the ship is in compliance with the requirements of this Law.
4. The State shall effectively exercise its jurisdiction and control over seafarer recruitment and placement services, which are established in China.
5. The State shall prohibit violations of the requirements of this Law and shall, in accordance with international law, establish sanctions or require the adoption of corrective measures under Chinese laws which are adequate to discourage such violations.

## **CHAPTER II MINIMUM REQUIREMENTS FOR SEAFARERS TO WORK ON A SHIP**

### *Article 4 Minimum age*

1. The employment, engagement or work on board a ship of any person under the age of 18 shall be prohibited.
2. Night work of seafarers under the age of 20 shall be prohibited. For the purposes of this Standard, “night” means the period from 8:00 p.m. to 5:00 a.m.

***Article 5 Medical certificate***

1. Prior to beginning work on a ship, seafarers should hold a valid medical certificate attesting that they are medically fit to perform the duties they are to carry out at sea.
2. The medical certificate shall be issued by a duly qualified medical practitioner or, in the case of a certificate solely concerning eyesight, by a person recognized by the competent authority as qualified to issue such a certificate. Practitioners must enjoy full professional independence in exercising their medical judgment in undertaking medical examination procedures.
3. Seafarers that have been refused a certificate or have had a limitation imposed on their ability to work, in particular with respect to time, field of work or trading area, shall be given the opportunity to have a further examination by another independent medical practitioner or by an independent medical referee.
4. Each medical certificate shall state in particular that:
  - (a) the hearing and sight of the seafarer concerned, and the colour vision in the case of a seafarer to be employed in capacities where fitness for the work to be performed is liable to be affected by defective colour vision, are all satisfactory; and

(b) the seafarer concerned is not suffering from any medical condition likely to be aggravated by service at sea or to render the seafarer unfit for such service or to endanger the health of other persons on board.

5. A certification of colour vision shall be valid for a maximum period of six years.

6. In urgent cases the competent authority may permit a seafarer to work without a valid medical certificate until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that:

(a) the period of such permission does not exceed three months; and

(b) the seafarer concerned is in possession of an expired medical certificate of recent date.

7. If the period of validity of a certificate expires in the course of a voyage, the certificate shall continue in force until the next port of call where the seafarer can obtain a medical certificate from a qualified medical practitioner, provided that the period shall not exceed three months.

8. The medical certificates for seafarers working on ships ordinarily engaged on international voyages must be provided both in Chinese and English.

#### ***Article 6 Training and qualifications***

1. Seafarers shall not work on a ship unless they are trained or certified as competent or otherwise qualified to perform their duties.

2. Seafarers shall not be permitted to work on a ship unless they have successfully completed training for personal safety on board ship.

***Article 7 Recruitment and placement***

1. The competent authority shall ensure that the seafarer recruitment and placement service is operated in an orderly manner that protects and promotes seafarers' employment rights as provided in this Law.

2. The competent authority also shall:

(a) prohibit seafarer recruitment and placement services from using means, mechanisms or lists intended to prevent or deter seafarers from gaining employment for which they are qualified;

(b) require that no fees or other charges for seafarer recruitment or placement or for providing employment to seafarers are borne directly or indirectly, in whole or in part, by the seafarer, other than the cost of the seafarer obtaining a medical certificate, the seafarer's book and a passport or other similar personal travel documents, not including, however, the cost of visas, which shall be borne by the shipowner; and

(c) ensure that seafarer recruitment and placement services operating in China:

(i) maintain an up-to-date register of all seafarers recruited or placed through them, to be available for inspection by the competent authority;

(ii) make sure that seafarers are informed of their rights and duties under their employment agreements prior to or in the process of engagement and that proper arrangements are made for seafarers to examine their employment agreements before and after they are signed and for them to receive a copy of the agreements;

- (iii) verify that seafarers recruited or placed by them are qualified and hold the documents necessary for the job concerned, and that the seafarers' employment agreements are in accordance with applicable laws and regulations and any collective bargaining agreement that forms part of the employment agreement;
- (iv) make sure, as far as practicable, that the shipowner has the means to protect seafarers from being stranded in a foreign port;
- (v) examine and respond to any complaint concerning their activities and advise the competent authority of any unresolved complaint;
- (vi) establish a system of protection, by way of insurance or an equivalent appropriate measure, to compensate seafarers for monetary loss that they may incur as a result of the failure of a recruitment and placement service or the relevant shipowner under the seafarers' employment agreement to meet its obligations to them.

3. The competent authority shall closely supervise and control all seafarer recruitment and placement services operating in China. Any licenses or certificates or similar authorizations for the operation of private services in China are granted or renewed only after verification that the seafarer recruitment and placement service concerned meets the requirements of Chinese laws and regulations.

### **CHAPTER III. CONDITIONS OF EMPLOYMENT**

#### ***Article 8 Seafarers' employment agreements***



1. The terms and conditions for employment of a seafarer shall be set out or referred to in a clear written legally enforceable agreement and shall be consistent with the standards set out in this Law.

2. Seafarers' employment agreements shall be agreed to by the seafarer under conditions which ensure that the seafarer has an opportunity to review and seek advice on the terms and conditions in the agreement and freely accepts them before signing.

3. Seafarers' employment agreements shall be understood to incorporate any applicable collective bargaining agreements.

4. The Competent Authority shall ensure that ships that fly Chinese flag comply with the following requirements:

(a) seafarers working on ships that fly its flag shall have a seafarers' employment agreement signed by both the seafarer and the shipowner or a representative of the shipowner (or, where they are not employees, evidence of contractual or similar arrangements) providing them with decent working and living conditions on board the ship as required by this Convention;

(b) seafarers signing a seafarers' employment agreement shall be given an opportunity to examine and seek advice on the agreement before signing, as well as such other facilities as are necessary to ensure that they have freely entered into an agreement with a sufficient understanding of their rights and responsibilities;

(c) the shipowner and seafarer concerned shall each have a signed original of the seafarers' employment agreement;

(d) measures shall be taken to ensure that clear information as to the conditions of their employment can be easily obtained on board by seafarers, including the ship's master, and that such information, including a copy of the seafarers' employment agreement, is also accessible for review by officers of a competent authority, including those in ports to be visited; and

(e) seafarers shall be given a document containing a record of their employment on board the ship.

5. Where a collective bargaining agreement forms all or part of a seafarers' employment agreement, a copy of that agreement shall be available on board.

6. Seafarers' employment agreements shall in all cases contain the following particulars:

(a) the seafarer's full name, date of birth or age, and birthplace;

(b) the shipowner's name and address;

(c) the place where and date when the seafarers' employment agreement is entered into;

(d) the capacity in which the seafarer is to be employed;

(e) the amount of the seafarer's wages or, where applicable, the formula used for calculating them;

(f) the amount of paid annual leave or, where applicable, the formula used for calculating it;

(g) the termination of the agreement and the conditions thereof, including:

- (i) if the agreement has been made for an indefinite period, the conditions entitling either party to terminate it, as well as the required notice period, which shall not be less for the shipowner than for the seafarer;
  - (ii) if the agreement has been made for a definite period, the date fixed for its expiry;and
  - (iii) if the agreement has been made for a voyage, the port of destination and the time which has to expire after arrival before the seafarer should be discharged;
- (h) the health and social security protection benefits to be provided to the seafarer by the shipowner;
- (i) the seafarer's entitlement to repatriation;
- (j) reference to the collective bargaining agreement, if applicable; and
- (k) any other particulars which Chinese law may require.

7. The minimum notice period to be given by the seafarers and shipowners for the early termination of a seafarers' employment agreement is 30 days.

### ***Article 9 Wages***

1. The payments due to seafarers working on ships that fly Chinese flag shall be made at no greater than monthly intervals and in accordance with any applicable collective agreement.

2. Seafarers shall be given a monthly account of the payments due and the amounts paid, including wages, additional payments and the rate of exchange used where payment has been made in a currency or at a rate different from the one agreed to.

3. The competent authority shall require that shipowners take measures to provide seafarers with a means to transmit all or part of their earnings to their families or dependants or legal beneficiaries.

4. Measures to ensure that seafarers are able to transmit their earnings to their families include:

(a) a system for enabling seafarers, at the time of their entering employment or during it, to allot, if they so desire, a proportion of their wages for remittance at regular intervals to their families by bank transfers or similar means; and

(b) a requirement that allotments should be remitted in due time and directly to the person or persons nominated by the seafarers.

5. Any charge for the service under paragraphs 3 and 4 of this article shall be reasonable in amount, and the rate of currency exchange, unless otherwise provided, shall, in accordance with Chinese laws or regulations, be at the prevailing market rate or the official published rate and not unfavourable to the seafarer.

#### ***Article 10 Hours of work and hours of rest***

1. For the purpose of this article, the term:

(a) *hours of work* means time during which seafarers are required to do work on account of the ship;

(b) *hours of rest* means time outside hours of work; this term does not include short breaks.

2. The normal working hours' standard for seafarers shall be based on an eight-hour day with one day of rest per week and rest on public holidays.

3. The limits on hours of work or rest shall be as follows:

(a) maximum hours of work shall not exceed:

(i) 14 hours in any 24-hour period; and

(ii) 72 hours in any seven-day period;

or

(b) minimum hours of rest shall not be less than:

(i) ten hours in any 24-hour period; and

(ii) 77 hours in any seven-day period.

4. Hours of rest may be divided into no more than two periods, one of which shall be at least six hours in length, and the interval between consecutive periods of rest shall not exceed 14 hours.

5. Musters, fire-fighting and lifeboat drills, and drills prescribed by Chinese laws and regulations and by international instruments, shall be conducted in a manner that minimizes the disturbance of rest periods and does not induce fatigue.

6. When a seafarer is on call, such as when a machinery space is unattended, the seafarer shall have an adequate compensatory rest period if the normal period of rest is disturbed by call-outs to work.

7. The competent authority shall require the posting, in an easily accessible place, of a table with the shipboard working arrangements, which shall contain for every position at least:

(a) the schedule of service at sea and service in port; and

(b) the maximum hours of work or the minimum hours of rest required by Chinese laws or regulations or applicable collective agreements.

8. The table referred to in paragraph 7 of this article shall be established in a standardized format in Chinese and in English.

9. The competent authority shall require that records of seafarers' daily hours of work or of their daily hours of rest be maintained. The records shall be in a standardized format established by the competent authority taking into account any available guidelines of the International Labour Organization or shall be in any standard format prepared by the Organization. The seafarers shall receive a copy of the records pertaining to them which shall be endorsed by the master, or a person authorized by the master, and by the seafarers.

10. Nothing in this article shall be deemed to impair the right of the master of a ship to require a seafarer to perform any hours of work necessary for the immediate safety of the ship, persons on board or cargo, or for the purpose of giving assistance to other ships or persons in distress at sea. Accordingly, the master may suspend the schedule of hours of work or hours of rest and require a seafarer to perform any hours of work necessary until the normal situation has been restored. As soon as practicable after the normal situation has been restored, the master shall ensure that any seafarers who

have performed work in a scheduled rest period are provided with an adequate period of rest.

***Article 11 Entitlement to leave***

1. The competent authority shall adopt regulations determining the minimum standards for annual leave for seafarers serving on ships that fly Chinese flag, taking proper account of the special needs of seafarers with respect to such leave.

2. Subject to any collective agreement or laws or regulations providing for an appropriate method of calculation that takes account of the special needs of seafarers in this respect, the annual leave with pay entitlement shall be calculated on the basis of a minimum of 2.5 calendar days per month of employment. Justified absences from work shall not be considered as annual leave.

3. Any agreement to forgo the minimum annual leave with pay prescribed in this article, except in cases provided for by the competent authority, shall be prohibited.

***Article 12 Repatriation***

1. The seafarers on ships that fly Chinese flag shall be entitled to repatriation in the following circumstances:

(a) if the seafarers' employment agreement expires while they are abroad;

(b) when the seafarers' employment agreement is terminated:

(i) by the shipowner; or

(ii) by the seafarer for justified reasons; and also

(c) when the seafarers are no longer able to carry out their duties under their employment agreement or cannot be expected to carry them out in the specific circumstances.

2. The competent authority shall prohibit shipowners from requiring that seafarers make an advance payment towards the cost of repatriation at the beginning of their employment, and also from recovering the cost of repatriation from the seafarers' wages or other entitlements except where the seafarer has been found, in accordance with Chinese laws or regulations or other measures or applicable collective bargaining agreements, to be in serious default of the seafarer's employment obligations.

3. If a shipowner fails to make arrangements for or to meet the cost of repatriation of seafarers who are entitled to be repatriated:

(a) the competent authority shall arrange for repatriation of the seafarers concerned;

(b) costs incurred in repatriating seafarers shall be recoverable from the shipowner;

(c) the expenses of repatriation shall in no case be a charge upon the seafarers, except as provided for in paragraph 2 of this article.

4. The State shall facilitate the repatriation of seafarers serving on ships which call at its ports or pass through its territorial or internal waters, as well as their replacement on board.

5. The competent authority shall require that ships that fly Chinese flag carry and make available to seafarers a copy of the applicable Chinese law provisions regarding repatriation.



***Article 13 Seafarer compensation for the ship's loss or foundering***

In every case of loss or foundering of any ship, the shipowner shall pay to each seafarer on board an indemnity against unemployment resulting from such loss or foundering.

***Article 14 Manning levels***

1. All ships that fly Chinese flag should have a sufficient number of seafarers on board to ensure that ships are operated safely, efficiently and with due regard to security. Every ship shall be manned by a crew that is adequate, in terms of size and qualifications, to ensure the safety and security of the ship and its personnel, under all operating conditions, in accordance with the minimum safe manning document or an equivalent issued by the competent authority, and to comply with the standards of this Law.

2. When determining, approving or revising manning levels, the competent authority shall take into account the need to avoid or minimize excessive hours of work to ensure sufficient rest and to limit fatigue, as well as the principles in applicable international instruments, especially those of the International Maritime Organization, on manning levels.

***Article 15 Career and skill development and opportunities for seafarers' employment***

The competent authority shall, after consulting the shipowners' and seafarers' organizations concerned, establish clear objectives for the vocational guidance, education and training of seafarers whose duties on board ship primarily relate to the safe operation and navigation of the ship, including ongoing training.

#### **CHAPTER IV. ACCOMMODATION, RECREATIONAL FACILITIES, FOOD AND CATERING**

##### ***Article 16 Accommodation and recreational facilities***

1. The ships that fly Chinese flag shall:

(a) meet minimum standards to ensure that any accommodation for seafarers, working or living on board, or both, is safe, decent and in accordance with the relevant provisions of this article; and

(b) are inspected to ensure initial and ongoing compliance with those standards.

2. The competent authority shall pay particular attention to ensuring implementation of the requirements of this Convention relating to:

(a) the size of rooms and other accommodation spaces;

(b) heating and ventilation;

(c) noise and vibration and other ambient factors;

(d) sanitary facilities;

(e) lighting; and

(f) hospital accommodation.

3. With respect to general requirements for accommodation:

(a) there shall be adequate headroom in all seafarer accommodation; the minimum permitted headroom in all seafarer accommodation where full and free movement is necessary shall be not less than 203 centimetres; the competent authority may permit some limited reduction in headroom in any space, or part of any space, in such accommodation where it is satisfied that such reduction:

(i) is reasonable; and

(ii) will not result in discomfort to the seafarers;

(b) the accommodation shall be adequately insulated;

(c) in ships other than passenger ships, as defined in Regulation 2(e) and (f) of the International Convention for the Safety of Life at Sea, 1974, as amended (the “SOLAS Convention”), sleeping rooms shall be situated above the load line amidships or aft, except that in exceptional cases, where the size, type or intended service of the ship renders any other location impracticable, sleeping rooms may be located in the fore part of the ship, but in no case forward of the collision bulkhead;

(d) in passenger ships, and in special ships constructed in compliance with the IMO *Code of Safety for Special Purpose Ships*, 1983, and subsequent versions (hereinafter called “special purpose ships”), the competent authority may, on condition that satisfactory arrangements are made for lighting and ventilation, permit the location of sleeping rooms below the load line, but in no case shall they be located immediately beneath working alleyways;

(e) there shall be no direct openings into sleeping rooms from cargo and machinery spaces or from galleys, storerooms, drying rooms or communal sanitary areas; that part of a bulkhead separating such places from sleeping rooms and external bulkheads shall be efficiently constructed of steel or other approved substance and be watertight and gas-tight;

(f) the materials used to construct internal bulkheads, panelling and sheeting, floors and joinings shall be suitable for the purpose and conducive to ensuring a healthy environment;

(g) proper lighting and sufficient drainage shall be provided; and

(h) accommodation and recreational and catering facilities shall meet the requirements in this Law, on health and safety protection and accident prevention, with respect to preventing the risk of exposure to hazardous levels of noise and vibration and other ambient factors and chemicals on board ships, and to provide an acceptable occupational and onboard living environment for seafarers.

4. With respect to requirements for ventilation and heating:

(a) sleeping rooms and mess rooms shall be adequately ventilated;

(b) ships, except those regularly engaged in trade where temperate climatic conditions do not require this, shall be equipped with air conditioning for seafarer accommodation, for any separate radio room and for any centralized machinery control room;

(c) all sanitary spaces shall have ventilation to the open air, independently of any other part of the accommodation; and

(d) adequate heat through an appropriate heating system shall be provided, except in ships exclusively on voyages in tropical climates.

5. With respect to requirements for lighting, subject to such special arrangements as may be permitted in passenger ships, sleeping rooms and mess rooms shall be lit by natural light and provided with adequate artificial light.

6. When sleeping accommodation on board ships is required, the following requirements for sleeping rooms apply:

(a) in ships other than passenger ships, an individual sleeping room shall be provided for each seafarer; in the case of ships of less than 3,000 gross tonnage or special purpose ships, exemptions from this requirement may be granted by the competent authority after consultation with the shipowners' and seafarers' organizations concerned;

(b) separate sleeping rooms shall be provided for men and for women;

(c) sleeping rooms shall be of adequate size and properly equipped so as to ensure reasonable comfort and to facilitate tidiness;

(d) a separate berth for each seafarer shall in all circumstances be provided;

(e) the minimum inside dimensions of a berth shall be at least 198 centimetres by 80 centimetres;

(f) in single berth seafarers' sleeping rooms the floor area shall not be less than:

(i) 4.5 square metres in ships of less than 3,000 gross tonnage;

(ii) 5.5 square metres in ships of 3,000 gross tonnage or over but less than 10,000 gross tonnage;

- (iii) 7 square metres in ships of 10,000 gross tonnage or over;
- (g) however, in order to provide single berth sleeping rooms on ships of less than 3,000 gross tonnage, passenger ships and special purpose ships, the competent authority may allow a reduced floor area;
- (h) in ships of less than 3,000 gross tonnage other than passenger ships and special purpose ships, sleeping rooms may be occupied by a maximum of two seafarers; the floor area of such sleeping rooms shall not be less than 7 square metres;
- (i) on passenger ships and special purpose ships the floor area of sleeping rooms for seafarers not performing the duties of ships' officers shall not be less than:
  - (i) 7.5 square metres in rooms accommodating two persons;
  - (ii) 11.5 square metres in rooms accommodating three persons;
  - (iii) 14.5 square metres in rooms accommodating four persons;
- (j) on special purpose ships sleeping rooms may accommodate more than four persons; the floor area of such sleeping rooms shall not be less than 3.6 square metres per person;
- (k) on ships other than passenger ships and special purpose ships, sleeping rooms for seafarers who perform the duties of ships' officers, where no private sitting room or day room is provided, the floor area per person shall not be less than:
  - (i) 7.5 square metres in ships of less than 3,000 gross tonnage;
  - (ii) 8.5 square metres in ships of 3,000 gross tonnage or over but less than 10,000 gross tonnage;
  - (iii) 10 square metres in ships of 10,000 gross tonnage or over;

- (l) on passenger ships and special purpose ships the floor area for seafarers performing the duties of ships' officers where no private sitting room or day room is provided, the floor area per person for junior officers shall not be less than 7.5 square metres and for senior officers not less than 8.5 square metres; junior officers are understood to be at the operational level, and senior officers at the management level;
- (m) the master, the chief engineer and the chief navigating officer shall have, in addition to their sleeping rooms, an adjoining sitting room, day room or equivalent additional space; ships of less than 3,000 gross tonnage may be exempted by the competent authority from this requirement after consultation with the shipowners' and seafarers' organizations concerned;
- (n) for each occupant, the furniture shall include a clothes locker of ample space (minimum 475 litres) and a drawer or equivalent space of not less than 56 litres; if the drawer is incorporated in the clothes locker then the combined minimum volume of the clothes locker shall be 500 litres; it shall be fitted with a shelf and be able to be locked by the occupant so as to ensure privacy;
- (o) each sleeping room shall be provided with a table or desk, which may be of the fixed, drop-leaf or slide-out type, and with comfortable seating accommodation as necessary.

7. With respect to requirements for mess rooms:

- (a) mess rooms shall be located apart from the sleeping rooms and as close as practicable to the galley; ships of less than 3,000 gross tonnage may be exempted by

the competent authority from this requirement after consultation with the shipowners' and seafarers' organizations concerned; and

(b) mess rooms shall be of adequate size and comfort and properly furnished and equipped (including ongoing facilities for refreshment), taking account of the number of seafarers likely to use them at any one time; provision shall be made for separate or common mess room facilities as appropriate.

8. With respect to requirements for sanitary facilities:

(a) all seafarers shall have convenient access on the ship to sanitary facilities meeting minimum standards of health and hygiene and reasonable standards of comfort, with separate sanitary facilities being provided for men and for women;

(b) there shall be sanitary facilities within easy access of the navigating bridge and the machinery space or near the engine room control centre; ships of less than 3,000 gross tonnage may be exempted by the competent authority from this requirement after consultation with the shipowners' and seafarers' organizations concerned;

(c) in all ships a minimum of one toilet, one wash basin and one tub or shower or both for every six persons or less who do not have personal facilities shall be provided at a convenient location;

(d) with the exception of passenger ships, each sleeping room shall be provided with a washbasin having hot and cold running fresh water, except where such a washbasin is situated in the private bathroom provided;

(e) in passenger ships normally engaged on voyages of not more than four hours' duration, consideration may be given by the competent authority to special



arrangements or to a reduction in the number of facilities required; and (f) hot and cold running fresh water shall be available in all wash places.

9. With respect to requirements for hospital accommodation, ships carrying 15 or more seafarers and engaged in a voyage of more than three days' duration shall provide separate hospital accommodation to be used exclusively for medical purposes; the competent authority may relax this requirement for ships engaged in coastal trade; in approving on-board hospital accommodation, the competent authority shall ensure that the accommodation will, in all weathers, be easy of access, provide comfortable housing for the occupants and be conducive to their receiving prompt and proper attention.

10. Appropriately situated and furnished laundry facilities shall be available.

11. All ships shall have a space or spaces on open deck to which the seafarers can have access when off duty, which are of adequate area having regard to the size of the ship and the number of seafarers on board.

12. All ships shall be provided with separate offices or a common ship's office for use by deck and engine departments; ships of less than 3,000 gross tonnage may be exempted by the competent authority from this requirement after consultation with the shipowners' and seafarers' organizations concerned.

13. Ships regularly trading to mosquito-infested ports shall be fitted with appropriate devices as required by the competent authority.

14. Appropriate seafarers' recreational facilities, amenities and services, as adapted to meet the special needs of seafarers who must live and work on ships, shall be

provided on board for the benefit of all seafarers, taking into account on health and safety protection and accident prevention.

15. The competent authority shall require frequent inspections to be carried out on board ships, by or under the authority of the master, to ensure that seafarer accommodation is clean, decently habitable and maintained in a good state of repair. The results of each such inspection shall be recorded and be available for review.

16. In the case of ships where there is need to take account, without discrimination, of the interests of seafarers having differing and distinctive religious and social practices, the competent authority may, after consultation with the shipowners' and seafarers' organizations concerned, permit fairly applied variations in respect of this article on condition that such variations do not result in overall facilities less favourable than those which would result from the application of this article.

### ***Article 17 Food and catering***

1. The competent authority shall ensure that ships that fly Chinese flag meet the following minimum standards:

(a) food and drinking water supplies, having regard to the number of seafarers on board, their religious requirements and cultural practices as they pertain to food, and the duration and nature of the voyage, shall be suitable in respect of quantity, nutritional value, quality and variety;

(b) the organization and equipment of the catering department shall be such as to permit the provision to the seafarers of adequate, varied and nutritious meals prepared and served in hygienic conditions; and

(c) catering staff shall be properly trained or instructed for their positions.

2. Shipowners shall ensure that seafarers who are engaged as ships' cooks are trained, qualified and found competent for the position in accordance with requirements set out in the laws and regulations concerned.

3. The requirements under paragraph 2 of this article shall include a completion of a training course approved or recognized by the competent authority, which covers practical cookery, food and personal hygiene, food storage, stock control, and environmental protection and catering health and safety.

4. On ships operating with a prescribed manning of less than ten which, by virtue of the size of the crew or the trading pattern, may not be required by the competent authority to carry a fully qualified cook, anyone processing food in the galley shall be trained or instructed in areas including food and personal hygiene as well as handling and storage of food on board ship.

5. In circumstances of exceptional necessity, the competent authority may issue a dispensation permitting a non-fully qualified cook to serve in a specified ship for a specified limited period, until the next convenient port of call or for a period not exceeding one month, provided that the person to whom the dispensation is issued is trained or instructed in areas including food and personal hygiene as well as handling and storage of food on board ship.

6. In accordance with the ongoing compliance procedures, the competent authority shall require that frequent documented inspections be carried out on board ships, by or under the authority of the master, with respect to:

(a) supplies of food and drinking water;

(b) all spaces and equipment used for the storage and handling of food and drinking water; and

(c) galley and other equipment for the preparation and service of meals.

8. No seafarer under the age of 18 shall be employed or engaged or work as a ship's cook.

## **CHAPTER V. HEALTH PROTECTION, MEDICAL CARE, WELFARE AND SOCIAL SECURITY PROTECTION**

### ***Article 18 Medical care on board ship and ashore***

1. The competent authority should:

(a) ensure the application to seafarers of any general provisions on occupational health protection and medical care relevant to their duties, as well as of special provisions specific to work on board ship;

(b) ensure that seafarers are given health protection and medical care as comparable as possible to that which is generally available to workers ashore, including prompt access to the necessary medicines, medical equipment and facilities for diagnosis and treatment and to medical information and expertise;

(c) give seafarers the right to visit a qualified medical doctor or dentist without delay in ports of call, where practicable;

(d) ensure that, to the extent consistent with the Member's national law and practice, medical care and health protection services while a seafarer is on board ship or landed in a foreign port are provided free of charge to seafarers; and

(e) are not limited to treatment of sick or injured seafarers but include measures of a preventive character such as health promotion and health education programmes.

2. The competent authority shall adopt a standard medical report form for use by the ships' masters and relevant onshore and on-board medical personnel. The form, when completed, and its contents shall be kept confidential and shall only be used to facilitate the treatment of seafarers.

3. The competent authority shall ensure the following requirements:

(a) all ships shall carry a medicine chest, medical equipment and a medical guide, the specifics of which shall be prescribed and subject to regular inspection by the competent authority; the national requirements shall take into account the type of ship, the number of persons on board and the nature, destination and duration of voyages and relevant national and international recommended medical standards;

(b) ships carrying 100 or more persons and ordinarily engaged on international voyages of more than three days' duration shall carry a qualified medical doctor who is responsible for providing medical care; national laws or regulations shall also specify which other ships shall be required to carry a medical doctor, taking into

account, inter alia, such factors as the duration, nature and conditions of the voyage and the number of seafarers on board;

(c) ships which do not carry a medical doctor shall be required to have either at least one seafarer on board who is in charge of medical care and administering medicine as part of their regular duties or at least one seafarer on board competent to provide medical first aid; persons in charge of medical care on board who are not medical doctors shall have satisfactorily completed training in medical care that meets the requirements of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (“STCW”); seafarers designated to provide medical first aid shall have satisfactorily completed training in medical first aid that meets the requirements of STCW; and

(d) the competent authority shall ensure by a prearranged system that medical advice by radio or satellite communication to ships at sea, including specialist advice, is available 24 hours a day; medical advice, including the onward transmission of medical messages by radio or satellite communication between a ship and those ashore giving the advice, shall be available free of charge to all ships irrespective of the flag that they fly.

#### ***Article 19 Shipowners’ liability***

1. The competent authority shall require the shipowners of the ships that fly Chinese flag are responsible for health protection and medical care of all seafarers working on board the ships in accordance with the following minimum standards:

(a) shipowners shall be liable to bear the costs for seafarers working on their ships in respect of sickness and injury of the seafarers occurring between the date of commencing duty and the date upon which they are deemed duly repatriated, or arising from their employment between those dates;

(b) shipowners shall provide financial security to assure compensation in the event of the death or long-term disability of seafarers due to an occupational injury, illness or hazard, as set out in national law, the seafarers' employment agreement or collective agreement;

(c) shipowners shall be liable to defray the expense of medical care, including medical treatment and the supply of the necessary medicines and therapeutic appliances, and board and lodging away from home until the sick or injured seafarer has recovered, or until the sickness or incapacity has been declared of a permanent character; and

(d) shipowners shall be liable to pay the cost of burial expenses in the case of death occurring on board or ashore during the period of engagement.

2. The liability of the shipowner to defray the expense of medical care and board and lodging to a period which shall not be less than 16 weeks from the day of the injury or the commencement of the sickness.

3. Where the sickness or injury results in incapacity for work the shipowner shall be liable:

(a) to pay full wages as long as the sick or injured seafarers remain on board or until the seafarers have been repatriated in accordance with this Convention; and

(b) to pay wages in whole or in part as prescribed by national laws or regulations or as provided for in collective agreements from the time when the seafarers are repatriated or landed until their recovery or, if earlier, until they are entitled to cash benefits under the legislation of the Member concerned.

4. The liability of the shipowner to pay wages in whole or in part in respect of a seafarer no longer on board to a period which shall not be less than 16 weeks from the day of the injury or the commencement of the sickness.

5. The shipowner may be excluded from liability in respect of:

(a) injury incurred otherwise than in the service of the ship;

(b) injury or sickness due to the wilful misconduct of the sick, injured or deceased seafarer; and

(c) sickness or infirmity intentionally concealed when the engagement is entered into.

6. The shipowner may be exempted from liability to defray the expense of medical care and board and lodging and burial expenses in so far as such liability is assumed by the public authorities.

7. Shipowners or their representatives shall take measures for safeguarding property left on board by sick, injured or deceased seafarers and for returning it to them or to their next of kin.

## ***Article 20 Health and safety protection and accident prevention***

1. The competent authority shall ensure that:



(a) occupational accidents, injuries and diseases are adequately reported, taking into account the guidance provided by the International Labour Organization with respect to the reporting and recording of occupational accidents and diseases;

(b) comprehensive statistics of such accidents and diseases are kept, analysed and published and, where appropriate, followed up by research into general trends and into the hazards identified; and

(c) occupational accidents are investigated.

2. Reporting and investigation of occupational safety and health matters shall be designed to ensure the protection of seafarers' personal data, and shall take account of the guidance provided by the International Labour Organization on this matter.

3. The competent authority shall cooperate with shipowners' and seafarers' organizations to take measures to bring to the attention of all seafarers information concerning particular hazards on board ships, for instance, by posting official notices containing relevant instructions.

4. The competent authority shall require that shipowners conducting risk evaluation in relation to management of occupational safety and health refer to appropriate statistical information from their ships and from general statistics provided by the competent authority.

#### ***Article 21 Access to shore-based welfare facilities***

1. The competent authority shall require, where welfare facilities exist in China, that they are available for the use of all seafarers, irrespective of nationality, race, colour,

sex, religion, political opinion or social origin and irrespective of the flag State of the ship on which they are employed or engaged or work.

2. The competent authority shall promote the development of welfare facilities in appropriate ports of the country and determine, after consultation with the shipowners' and seafarers' organizations concerned, which ports are to be regarded as appropriate.

3. The competent authority shall encourage the establishment of welfare boards which shall regularly review welfare facilities and services to ensure that they are appropriate in the light of changes in the needs of seafarers resulting from technical, operational and other developments in the shipping industry.

#### ***Article 22 Social security***

1. The branches to be considered with a view to achieving progressively comprehensive social security protection are: medical care, sickness benefit, unemployment benefit, old-age benefit, employment injury benefit, family benefit, maternity benefit, invalidity benefit and survivors' benefit.

2. The competent authority shall ensure the maintenance of social security rights, provided through contributory or non-contributory schemes, which have been acquired, or are in the course of acquisition, by all seafarers regardless of residence.

3. The competent authority shall establish fair and effective procedures for the settlement of disputes.

## CHAPTER VI. COMPLIANCE AND ENFORCEMENT

### *Article 23 Maritime labour certificate and declaration of maritime labour compliance*

1. This Law applies to ships of:

- (a) 500 gross tonnage or over, engaged in international voyages; and
- (b) 500 gross tonnage or over, flying the flag of a Member and operating from a port, or between ports, in another country.

For the purpose of this Law, “international voyage” means a voyage from a country to a port outside such a country.

2. The competent authority shall require ships that fly its flag to carry and maintain a maritime labour certificate certifying that the working and living conditions of seafarers on the ship, including measures for ongoing compliance to be included in the declaration of maritime labour compliance referred to in this Law, have been inspected and meet the requirements of national laws or regulations or other measures implementing this Law.

3. The competent authority shall require ships that fly Chinese flag to carry and maintain a declaration of maritime labour compliance stating the national requirements implementing this Law for the working and living conditions for seafarers and setting out the measures adopted by the shipowner to ensure compliance with the requirements on the ship or ships concerned.

4. The maritime labour certificate and the declaration of maritime labour compliance

shall conform to the model prescribed by the Law.

5. Where the competent authority or a recognized organization duly authorized for this purpose has ascertained through inspection that a ship that flies Chinese flag meets or continues to meet the standards of this Law, it shall issue or renew a maritime labour certificate to that effect and maintain a publicly available record of that certificate.

6. The maritime labour certificate shall be issued to a ship by the competent authority, or by a recognized organization duly authorized for this purpose, for a period which shall not exceed five years.

7. The validity of the maritime labour certificate shall be subject to an intermediate inspection by the competent authority, or by a recognized organization duly authorized for this purpose, to ensure continuing compliance with the national requirements implementing this Law. If only one intermediate inspection is carried out and the period of validity of the certificate is five years, it shall take place between the second and third anniversary dates of the certificate. Anniversary date means the day and month of each year which will correspond to the date of expiry of the maritime labour certificate. The scope and depth of the intermediate inspection shall be equal to an inspection for renewal of the certificate. The certificate shall be endorsed following satisfactory intermediate inspection.

8. Notwithstanding paragraph 6 of this article, when the renewal inspection has been completed within three months before the expiry of the existing maritime labour certificate, the new maritime labour certificate shall be valid from the date of

completion of the renewal inspection for a period not exceeding five years from the date of expiry of the existing certificate.

9. When the renewal inspection is completed more than three months before the expiry date of the existing maritime labour certificate, the new maritime labour certificate shall be valid for a period not exceeding five years starting from the date of completion of the renewal inspection.

10. A maritime labour certificate may be issued on an interim basis:

(a) to new ships on delivery;

(b) when a ship changes flag; or

(c) when a shipowner assumes responsibility for the operation of a ship which is new to that shipowner.

11. An interim maritime labour certificate may be issued for a period not exceeding six months by the competent authority or a recognized organization duly authorized for this purpose.

12. An interim maritime labour certificate may only be issued following verification that:

(a) the ship has been inspected, as far as reasonable and practicable, for the matters listed in Appendix A5-I, taking into account verification of items under subparagraphs

(b), (c) and (d) of this paragraph;

(b) the shipowner has demonstrated to the competent authority or recognized organization that the ship has adequate procedures to comply with this Law;

(c) the master is familiar with the requirements of this Law and the responsibilities for implementation; and

(d) relevant information has been submitted to the competent authority or recognized organization to produce a declaration of maritime labour compliance.

13. A full inspection in accordance with paragraph 1 of this Standard shall be carried out prior to expiry of the interim certificate to enable issue of the full-term maritime labour certificate. No further interim certificate may be issued following the initial six months. A declaration of maritime labour compliance need not be issued for the period of validity of the interim certificate.

14. The results of all subsequent inspections or other verifications carried out with respect to the ship concerned and any significant deficiencies found during any such verification shall be recorded, together with the date when the deficiencies were found to have been remedied. This record, accompanied by an English-language translation, should be inscribed upon or appended to the declaration of maritime labour compliance or made available in some other way to seafarers, flag State inspectors, authorized officers in port States and shipowners' and seafarers' representatives.

15. A current valid maritime labour certificate and declaration of maritime labour compliance, accompanied by an English-language translation, shall be carried on the ship and a copy shall be posted in a conspicuous place on board where it is available to the seafarers. A copy shall be made available upon request, to seafarers, flag State inspectors, authorized officers in port States, and shipowners' and seafarers' representatives.

16. The requirement for an English-language translation in paragraphs 11 and 12 of this Standard does not apply in the case of a ship not engaged in an international voyage.

17. A certificate issued under paragraph 1 or 5 of this Standard shall cease to be valid in any of the following cases:

(a) if the relevant inspections are not completed within the periods specified under this article;

(b) if the certificate is not endorsed in accordance with this article;

(c) when a ship changes flag;

(d) when a shipowner ceases to assume the responsibility for the operation of a ship;  
and

(e) when substantial changes have been made to the structure or equipment.

18. A maritime labour certificate shall be withdrawn by the competent authority or the recognized organization duly authorized by the State, if there is evidence that the ship concerned does not comply with the requirements of this Law and any required corrective action has not been taken.

#### ***Article 24    Inspection and enforcement***

1. The competent authority shall maintain a system of inspection of the conditions for seafarers on ships that fly its flag which shall include verification that the measures relating to working and living conditions as set out in the declaration of maritime

labour compliance, where applicable, are being followed, and that the requirements of this Law are met.

2. The competent authority shall appoint a sufficient number of qualified inspectors to fulfill its responsibilities under paragraph 1 of this article. Where recognized organizations have been authorized to carry out inspections, the competent authority shall require that personnel carrying out the inspection are qualified to undertake these duties and shall provide them with the necessary legal authority to perform their duties.

3. The competent authority shall ensure that the inspectors have the training, competence, terms of reference, powers, status and independence necessary or desirable so as to enable them to carry out the verification and ensure the compliance referred to in paragraph 1 of this article.

4. Inspections shall take place at the intervals which shall in no case exceed three years.

5. The competent authority shall take the steps necessary to investigate the matter and ensure that action is taken to remedy any deficiencies found.

6. The competent authority shall guarantee that inspectors have the status and conditions of service to ensure that they are independent of changes of government and of improper external influences.

7. Inspectors, issued with clear guidelines as to the tasks to be performed and provided with proper credentials, shall be empowered:

(a) to board a ship that flies Chinese flag;



(b) to carry out any examination, test or inquiry which they may consider necessary in order to satisfy themselves that the standards are being strictly observed; and

(c) to require that any deficiency is remedied and, where they have grounds to believe that deficiencies constitute a serious breach of the requirements of this Law (including seafarers' rights), or represent a significant danger to seafarers' safety, health or security, to prohibit a ship from leaving port until necessary actions are taken.

8. Any action taken pursuant to paragraph 7(c) of this article shall be subject to any right of appeal to a judicial or administrative authority.

9. Inspectors shall have the discretion to give advice instead of instituting or recommending proceedings when there is no clear breach of the requirements of this Law that endangers the safety, health or security of the seafarers concerned and where there is no prior history of similar breaches.

10. Inspectors shall treat as confidential the source of any grievance or complaint alleging a danger or deficiency in relation to seafarers' working and living conditions or a violation of laws and regulations and give no intimation to the shipowner, the shipowner's representative or the operator of the ship that an inspection was made as a consequence of such a grievance or complaint.

11. Inspectors shall not be entrusted with duties which might, because of their number or nature, interfere with effective inspection or prejudice in any way their authority or impartiality in their relations with shipowners, seafarers or other interested parties. In particular, inspectors shall:

(a) be prohibited from having any direct or indirect interest in any operation which

they are called upon to inspect; and

(b) subject to appropriate sanctions or disciplinary measures, not reveal, even after leaving service, any commercial secrets or confidential working processes or information of a personal nature which may come to their knowledge in the course of their duties.

12. Inspectors shall submit a report of each inspection to the competent authority. One copy of the report shall be furnished to the master of the ship and another copy shall be posted on the ship's notice board for the information of the seafarers and, upon request, sent to their representatives.

13. The competent authority shall maintain records of inspections of the conditions for seafarers on ships that fly Chinese flag. It shall publish an annual report on inspection activities within a reasonable time, not exceeding six months, after the end of the year.

14. In the case of an investigation pursuant to a major incident, the report shall be submitted to the competent authority as soon as practicable, but not later than one month following the conclusion of the investigation.

15. When an inspection is conducted or when measures are taken under this article, all reasonable efforts shall be made to avoid a ship being unreasonably detained or delayed.

16. Compensation shall be payable in accordance with Chinese laws and regulations for any loss or damage suffered as a result of the wrongful exercise of the inspectors' powers. The burden of proof in each case shall be on the complainant.

17. Adequate penalties and other corrective measures for breaches of the requirements of this Law (including seafarers' rights) and for obstructing inspectors in the performance of their duties shall be provided for and effectively enforced.

***Article 25 On-board complaint procedures***

1. The on-board procedures may be used by seafarers to lodge complaints relating to any matter that is alleged to constitute a breach of the requirements of this Law (including seafarers' rights).

2. The on-board complaint procedures shall include the right of the seafarer to be accompanied or represented during the complaints procedure, as well as safeguards against the possibility of victimization of seafarers for filing complaints. The term "victimization" covers any adverse action taken by any person with respect to a seafarer for lodging a complaint which is not manifestly vexatious or maliciously made.

3. In addition to a copy of their seafarers' employment agreement, all seafarers shall be provided with a copy of the on-board complaint procedures applicable on the ship. This shall include contact information for the competent authority and, where different, in the seafarers' country of residence, and the name of a person or persons on board the ship who can, on a confidential basis, provide seafarers with impartial advice on their complaint and otherwise assist them in following the complaint procedures available to them on board the ship.

***Article 26 Marine casualties***

The competent authority shall hold an official inquiry into any serious marine casualty, leading to injury or loss of life, that involves a ship that flies Chinese flag. The final report of an inquiry shall normally be made public.

***Article 27 Inspections in port***

1. Where an authorized officer, having come on board to carry out an inspection and requested, where applicable, the maritime labour certificate and the declaration of maritime labour compliance, finds that:

(a) the required documents are not produced or maintained or are falsely maintained or that the documents produced do not contain the information required by this Law or are otherwise invalid; or

(b) there are clear grounds for believing that the working and living conditions on the ship do not conform to the requirements of this Law; or

(c) there are reasonable grounds to believe that the ship has changed flag for the purpose of avoiding compliance with this Law; or

(d) there is a complaint alleging that specific working and living conditions on the ship do not conform to the requirements of this Law; a more detailed inspection may be carried out to ascertain the working and living conditions on board the ship. Such inspection shall in any case be carried out where the working and living conditions believed or alleged to be defective could constitute a clear hazard to the safety, health or security of seafarers or where the authorized officer has grounds to believe that any

deficiencies constitute a serious breach of the requirements of this Law (including seafarers' rights).

2. In the case of a complaint under paragraph 1(d) of this article, the inspection shall generally be limited to matters within the scope of the complaint, although a complaint, or its investigation, may provide clear grounds for a detailed inspection in accordance with paragraph 1(b) of this Standard. For the purpose of paragraph 1(d) of this article, "complaint" means information submitted by a seafarer, a professional body, an association, a trade union or, generally, any person with an interest in the safety of the ship, including an interest in safety or health hazards to seafarers on board.

3. Where, following a more detailed inspection, the working and living conditions on the ship are found not to conform to the requirements of this Law, the authorized officer shall forthwith bring the deficiencies to the attention of the master of the ship, with required deadlines for their rectification. In the event that such deficiencies are considered by the authorized officer to be significant, the authorized officer shall bring the deficiencies to the attention of the appropriate seafarers' and shipowners' organizations, and may:

(a) notify a representative of the flag State;

(b) provide the competent authorities of the next port of call with the relevant information.

4. Where, following a more detailed inspection by an authorized officer, the ship is found not to conform to the requirements of this Law and:

(a) the conditions on board are clearly hazardous to the safety, health or security of seafarers; or

(b) the non-conformity constitutes a serious or repeated breach of the requirements of this Law (including seafarers' rights); the authorized officer shall take steps to ensure that the ship shall not proceed to sea until any non-conformities that fall within the scope of subparagraph (a) or (b) of this paragraph have been rectified, or until the authorized officer has accepted a plan of action to rectify such non-conformities and is satisfied that the plan will be implemented in an expeditious manner. If the ship is prevented from sailing, the authorized officer shall forthwith notify the flag State accordingly and invite a representative of the flag State to be present, if possible, requesting the flag State to reply within a prescribed deadline. The authorized officer shall also inform forthwith the appropriate shipowners' and seafarers' organizations in the port State in which the inspection was carried out.

***Article 28 Onshore seafarer complaint-handling procedures***

1. A complaint by a seafarer alleging a breach of the requirements of this Law (including seafarers' rights) may be reported to an authorized officer in the port at which the seafarer's ship has called. In such cases, the authorized officer shall undertake an initial investigation.

2. Where appropriate, given the nature of the complaint, the initial investigation shall include consideration of whether the on-board complaint procedures provided

have been explored. The authorized officer may also conduct a more detailed inspection .

3. The authorized officer shall, where appropriate, seek to promote a resolution of the complaint at the ship-board level.

4. Appropriate steps shall be taken to safeguard the confidentiality of complaints made by seafarers.

## **CHAPTER VII. SUPPLEMENTARY PROVISIONS**

### ***Article 29***

Specific functions and powers of relevant departments in maritime labour affairs supervision and administration, which not provided in this Law, shall be determined by the State Council.

### ***Article 30***

Statues and regulations pertaining to maritime labour affairs hitherto promulgated that are inconsistent with the present Law shall be null and void, and the latter shall prevail.

### ***Article 31***

The present Law shall come into effect on the 1<sup>st</sup> of January, 2008.