

COMMISSION OF INQUIRY  
APPOINTED PURSUANT TO SECTION 2 OF THE COMMISSION OF  
INQUIRY ORDINANCE (CHAPTER 86) ON 22 OCTOBER 2012

**WITNESS STATEMENT OF LEUNG WING FAI**

I, LEUNG WING FAI, General Manager, Local Vessels Safety Branch, Marine Department, 22/F, Harbour Building, 38 Pier Road, Central, Hong Kong, do say as follows: -

1. I am a General Manager in the Local Vessels Safety Branch (“LVSB”), Shipping Division of the Marine Department (“Mardep”). My duties include managing and administering the Local Vessels Safety Branch which consists of the Local Vessels Safety Section and the Marine Industrial Safety Section for their efficient and effective running and law enforcement in respect of regulating the safety standards and environment protection measures for local vessels and the occupation safety and health of persons employed and engaged in the works of cargo-handling, ship-repairing and marine construction on vessels in Hong Kong.

2. I am the holder of an Extra First Class Marine Engineer Officer Certificate of Competency issued by the Department of Transport of the United Kingdom. I joined Mardep as a Surveyor of Ships in 1992. I was promoted to become a Senior Surveyor of Ships in 2001 and then a Principal Surveyor of Ships in November 2011 and I still hold this rank now.

3. I make this Witness Statement on behalf of the Director of Marine (“Director”), who has been granted leave to participate in the hearings of the Commission of Inquiry appointed pursuant to section 2 of the Commission of Inquiry Ordinance, Cap.86, on 22 October 2012 (“the

**Commission**”) by the Ruling of the Commission made on 5 December 2012. Save where otherwise appears, the facts deposed hereto are within my personal knowledge or are derived from office files and records and sources to which I have access, and are true to the best of my knowledge, information and belief.

4. The purpose of this Witness Statement is to explain the development of the International Safety Management Code (“**ISM**” and “**ISM Code**”) and its implementation in Hong Kong through the enactment of the Merchant Shipping (Safety)(Safety Management) Regulation (Cap. 369AX) (“**Regulation**”). I would also explain how the provisions of the Regulation are administered and enforced by Mardep for the Hong Kong registered ships (ocean-going vessels) and the feasibility of requiring owners and/or operators of local vessels to implement a similar safety management system on local vessels.

#### **The Development of the ISM Code**

5. In the late 1980s, there were a number of very serious maritime accidents involving ocean-going vessels, which arose as a result of human error, including management faults. Those accident involved the vessels “Herald of Free Enterprise” (March 1987), “Exxon Valdes” (March 1989) and “Scandinavian Star” (April 1990).

6. In order to prevent the re-occurrence of similar accidents, the International Maritime Organization (“**IMO**”) adopted the International Management Code for the Safe Operation of Ships and for Pollution Prevention (i.e. the ISM Code) by its Resolution A741(18) in 1993.

7. The objective of the ISM Code is to provide an international standard for the safe management and operation of ships and for pollution prevention, to safeguard the shipmaster in the proper discharge of his

responsibility with regard to maritime safety, and the protection of the marine environment.

8. The ISM Code comprises of 2 parts: Part A is on implementation and Part B is on certification and verification. A copy of the ISM Code is annexed at “LWF-1”.

9. The ethos of the ISM Code is to enhance maritime safety from a corporate management and vessel management perspective. In other words, it is based on the premise of an enterprise with certain corporate structure, and tries to improve the management and reporting standards of both the enterprise (through the corporate structure and the management or support ashore) and the vessel it holds (through a hierarchical organization structure within the vessel) in order to enhance safety on board.

10. The basic requirement of the ISM Code is that the vessel has to have a management company. This management company would then establish a safety management system on board the vessel and ashore (within its corporate structure). The system aims to provide a safety environment and to ensure the safety of all shipboard operation against any identified risk. The intention is that with the implementation of such system, the standard of safety management of shipboard and shore staff would to be maintained.

11. For these reasons, the ISM Code is applied to ocean-going vessels and vessels on short international voyages, since they would have (or could more easily set up) the necessary corporate structure and vessel structure for the management system contemplated by the ISM Code to be applied meaningfully.

### **Implementation of the ISM Code in Hong Kong to ocean-going vessels**

12. In 1998, the ISM Code became mandatory internationally for ocean-going vessels. In the same year, to fulfil Hong Kong's obligation as a Convention Party to the International Convention for the Safety of Life at Sea ("SOLAS"), the ISM Code was implemented in Hong Kong through the enactment of the Regulation.

13. The Regulation applies to ocean-going Hong Kong registered ships. It aims at implementing a safety management system in accordance with the ISM Code for the safe operation of ships and for pollution prevention adopted by the IMO. The safety management system is a structured and documented system enabling a ship company to effectively implement the safety and environmental protection policy of that company.

14. Under the Regulation, the operating company of a vessel needs to apply from the Issuing Authority (which means the Director, being an appointed organization or the government of a state to which SOLAS applies and has been requested to perform a function or exercise a power under the Regulation) a Document of Compliance ("DOC") and a Safety Management Certificate ("SMC") (Sections 3 & 4 of the Regulation). A DOC or a SMC shall not be issued unless the company applying for it has shown to the satisfaction of the Issuing Authority that the company complies with the requirement of the ISM Code. Copies of such documents need to be kept on board the vessel ( Section 10 of the Regulation). A failure to possess or to produce for inspection an SMC or an interim SMC before embarking on a voyage outside the waters of Hong Kong is a criminal offence ( Section 17 of the Regulation).

15. In enforcing the requirement under the Regulation, Mardep will consider taking the following actions:-

- (a) Detaining ships if they come to Hong Kong which do not comply with the ISM requirements;

- (b) Such ship will be allowed to sail out provided they have no other detainable deficiency and the flag administration confirms that necessary action is being taken;
- (c) Advising such ships that they will not be allowed back to Hong Kong until they confirm to ISM certification and that they will be kept on the watch list of the Department's Vessel Traffic Centre;
- (d) Informing the next port of ships' ISM deficiency.

### **Limitations in relation to local vessels**

16. The ISM Code and the Regulation are not applicable to local vessels. The rationale behind this is that many of the local vessels are small-scale operations and they simply do not have nor can they afford the requisite structures and complexity for the ISM Code to apply in any meaningful manner.

17. A substantial number of local vessels are owned by a single individual; some do not involve any company structure. Vessels of this type are usually operated by the owner and very few staff, and typically with limited education. They do not have the necessary degree of sophistication to set up and operate a company structure and to establish a management framework within the vessel which are the basic requirements for implementing the ISM Code.

18. Moreover, the successful implementation of the ISM Code depends also on the education level of the personnel involved, as the system depends very much on the capability of the personnel to handle the documentation involved. For local vessel operators and crew, the education level and the calibre of the personnel involved is not as high as their counterparts for operating the ocean-going or even river trade vessels. Many of them are born and bred as fishermen and have only received elementary education (if at all).

19. Further, the expense involved to bring them up to a level

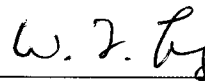
commensurate with ISM Code application may be crippling for many of them. If the owner of a local vessel is an individual and not a company and the owner operates only one vessel, the ISM Code cannot be implemented unless a company structure is put in place. However, the setting up of a company together with the employment of personnel to run the ISM solely for one vessel may incur unjustified and unsustainable cost burden to the operator.

20. Arising from the Lamma incident, there are discussions as to whether the ISM Code should also be implemented for local vessels. A preliminary evaluation shows that a safe management system can provide for safe practices in vessel operation and a safe working environment, assess all identified risks, personnel and the environment and establish appropriate safeguards and continuously improve safety management skills of personnel ashore and aboard vessels including preparing for emergencies related both to safety and environmental protection. Though not comparable with the ocean-going ships operators, the resources and personnel of the **large scale local ferry and launch operators** should be able to cope with the establishment and implementation of the safety management system. For small-scale operators, some of which may have very limited personnel resource with the owner acting as both the management and coxswain and without a proper company establishment, the application of the ISM Code may not be appropriate or practicable.

21. To implement the ISM Code for local vessels, Mardep would need to gear its capacity to train the ship inspectors on the ISM discipline and conducting certification audit for the companies and their vessels.

22. I confirm the contents of this Witness Statement to be true to the best of my knowledge, information and belief.

Dated this 14th day of February 2013.



LEUNG WING FAI

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Dated the 14th day of February 2013

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