

**Subcommittee on Merchant Shipping (Control of Harmful
Anti-fouling Systems on Ships) Regulation
and
Merchant Shipping (Prevention and Control of Pollution) (Fees)
(Amendment) Regulation 2015**

**Supplementary information requested by Members
at the meeting on 21 April 2015**

**Implementing international agreements
in Hong Kong SAR legislation**

I. Introduction

This paper sets out the various drafting approaches used in implementing international agreements applicable to the Hong Kong SAR in response to queries raised by LegCo members at the subcommittee meeting on the Merchant Shipping (Control of Harmful Anti-Fouling Systems on Ships) Regulation. In particular, the paper examines whether a uniform drafting approach should be adopted for the sake of consistency.

II. Different approaches in drafting domestic legislation to implement international agreements

2. Broadly speaking, the following drafting approaches are currently practised. It should be noted that different approaches may be used in a single piece of implementing legislation to implement different provisions of an international agreement.

(A) Incorporating texts of international agreements and adding supplementary provisions

3. The text of an international agreement may be incorporated into the implementing legislation by being set out in the legislation

(usually in a Schedule) and being given the force of law. In many cases, as it is not sufficient simply to give the text of the international agreement the force of law in Hong Kong, supplementary provisions may need to be added to the implementing legislation. For example, the Administration may wish to achieve its own policy goals with respect to the subject matter dealt with by an international agreement. This should not affect Hong Kong's position in international law, provided that the supplementary provisions are not inconsistent with the international agreement. Examples of this approach include the Child Abduction and Custody Ordinance (Cap. 512), the Consular Relations Ordinance (Cap. 557) and the Merchant Shipping (Safety) (Signals of Distress and Prevention of Collisions) Regulations (Cap. 369N).

(B) Transforming the texts of international agreements

4. In some cases, if the wording of an international agreement does not conform to our drafting practice, it is necessary to rewrite the legislative text to clarify the meaning and avoid misinterpretation.

5. If an international agreement requires parties to achieve specified results (e.g. taking action to prohibit or criminalize certain activities) without prescribing how to do so, the parties must design their own regulatory framework to implement the agreement. In this case, the Administration will have considerable room to draft the legislative provisions with regard to the Hong Kong context and to practices adopted by other parties to the agreement.

6. This approach is also common when existing legislation, which is largely consistent with the provisions of an international agreement, needs to be adapted to fully comply with the agreement.

7. An example of this approach may be found in the Smoking (Public Health) Ordinance (Cap. 371) which, amongst other things, implements the WHO Framework Convention on Tobacco Control 2003.

(C) Referring to the requirements under an international agreement

8. For highly technical provisions of an international agreement, the implementing legislation may refer to requirements under the agreement without setting out the text. An example of this approach is the Merchant Shipping (Safety) (Life-Saving Appliances) Regulation (Cap 369AY)¹.

III. Conclusion

9. As can be seen from the above, different drafting methods have been used to implement international agreements in our domestic system. This suits different types of international agreements and different policy needs. In practice, the method to be adopted is decided on a case by case basis by the Administration, after carefully considering the policy objectives and requirements and the nature and substance of the international agreement in question. In view of the above and in particular the difference in substance and level of details in each international agreement, it is considered unfeasible to adopt a uniform approach in drafting domestic legislation to implement international agreements.

Department of Justice
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¹ e.g. Section 4(1) referring to “the life-saving appliances and arrangements requirements as described in Chapter III of” the International Convention for the Safety of Life at Sea 1974.