

立法會
Legislative Council

LC Paper No. CB(1)2351/04-05
(These minutes have been seen
by the Administration)

Ref: CB1/BC/10/04

Bills Committee on Merchant Shipping
(Local Vessels and Miscellaneous Amendments) Bill 2005

Meeting on
Tuesday, 20 September 2005, at 2:30 pm
in Conference Room B of the Legislative Council Building

- Members present** : Hon Miriam LAU Kin-ye, GBS, JP (Chairman)
Hon CHAN Kam-lam, SBS, JP
Hon SIN Chung-kai, JP
Hon WONG Yung-kan, JP
- Public Officers Attending** : Miss Janice TSE
Deputy Secretary for Economic Development and Labour
(Economic Development)
- Mr R F TUPPER
Deputy Director of Marine
- Ms Alice LAU
Principal Assistant Secretary for Economic Development
and Labour (Port, Maritime and Logistics)
- Mr K L LEE
Acting Assistant Director (Shipping)
Marine Department
- Mr Y N CHAN
Senior Marine Officer (Legislation and Prosecution)
Marine Department
- Ms Marie SIU
Senior Government Counsel
Department of Justice

Ms Amy CHAN
Government Counsel
Department of Justice

Clerk in attendance : Mr Andy LAU
Chief Council Secretary (1)2

Staff in attendance : Miss Anita HO
Assistant Legal Adviser 2

Ms Anita SIT
Senior Council Secretary (1)9

Action

I Confirmation of minutes

(LC Paper No. CB(1)2162/04-05 - Minutes of meeting held on 13 July 2005)

The minutes of the meeting held on 13 July 2005 were confirmed.

II Meeting with the Administration

(LC Paper No. CB(1)2061/04-05(01) - A letter dated 12 July 2005 from the Administration in response to the issues raised at the Bills Committee meeting held on 28 June 2005

LC Paper No. CB(1)2285/04-05(01) - A letter dated 16 September 2005 from the Administration in response to the issues raised at the Bills Committee meeting held on 13 July 2005

- the Bill; and
- marked-up copy of the Bill)

2. The Bills Committee deliberated (index of proceedings attached at **Annex A**).

3. The Administration was requested to -

(a) review the composition of the Provisional Local Vessel Advisory Committee (PLVAC);

Action

- (b) review the provision of typhoon shelter facilities and the restriction on vessel length in the use of existing typhoon shelters. In the provision of new typhoon shelters or expansion of the existing facilities the latest size and needs of local vessels should be taken into account;
- (c) revise the Chinese version of the definition of “crane” under clause 2(c);
- (d) clarify how the Director of Marine (the Director) would exercise his power under new section 63A. In this regard, members called on the Administration to take heed of the views of the local fishing industry in determining the technical and safety standards for local fishing vessels so that the local fishing industry would not be unduly affected as a result of the restriction imposed by the Director regarding the operating areas for local fishing vessels; and
- (e) provide draft Committee Stage amendments (CSAs) regarding section 7, new sections 7A, 23E, 23F, 23G and 23K.

III Any other business

Date of next meeting

4. The Chairman said that the timing of the next meeting would be fixed after the meeting in consultation with members.

(Post-meeting note: The next meeting was subsequently scheduled for 12 October 2005 from 9:00 am to 10:45 am.)

5. There being no other business, the meeting ended at 4:30 pm.

Council Business Division 1
Legislative Council Secretariat
6 October 2005

**Proceedings of the third meeting of Bills Committee on
Merchant Shipping (Local Vessels and Miscellaneous Amendments) Bill 2005
Tuesday, 20 September 2005, at 2:30 pm
in Conference Room B of the Legislative Council Building**

| Time marker | Speaker | Subject(s) | Action required |
|---|--|--|-----------------|
| <i>Agenda Item I – Confirmation of minutes</i> | | | |
| 000000 – 000052 | Chairman | - Confirmation of minutes of the meeting held on 13 July 2005 (LC Paper No. CB(1)2162/04-05) | |
| <i>Agenda Item II – Meeting with the Administration</i> | | | |
| 000053 – 000409 | Chairman Administration | - Opening remarks - The Administration's response to issues raised at the meeting on 28 June 2005 (LC Paper No. CB(1)2061/04-05(01)) | |
| 000410 – 001231 | Administration Chairman Mr WONG Yung-kan | <p>The Administration's response to issues raised at the meeting on 13 July 2005 (LC Paper No. CB(1)2285/04-05(01))</p> <p>The Administration confirmed that upon implementation of the new vessel survey regime, the Marine Department (MD) would continue to provide vessel survey services at a prescribed fee. It was anticipated that with market competition, the fees that would be charged by authorized surveyors would be affordable, and probably lower than that charged by MD.</p> <p>The Administration advised that there was no provision under the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) (the Ordinance) or under the Bill prohibiting a provider of ship repair services from employing an authorized surveyor to perform vessel survey for vessels in respect of which the provider had rendered repair services. However, the principle was that an authorized surveyor must not engage in any service that might result in a conflict of interest with the performance of vessel survey. For instance, if the performance of vessel survey for a particular client or vessel might result in a conflict of interest, the authorized surveyor should refrain from performing vessel survey for that particular client or vessel. The principle would be set out in the Code of Practice for authorized surveyors to be issued by the Director.</p> <p>The Administration confirmed that irrespective of whether an authorized</p> | |

| Time marker | Speaker | Subject(s) | Action required |
|--------------------|--|--|---|
| | | <p>surveyor / recognized government authority was based in Hong Kong or otherwise, the Director would carry out audit check on surveys or plans approved by an authorized surveyor / recognized government authority. The Director was empowered to do so under the Bill.</p> | |
| 001232 – 001801 | <p>Administration Mr SIN Chung-kai Mr WONG Yung-kan Chairman</p> | <p>Review of safety requirements and inspection of fishing vessels</p> <p>Mr WONG suggested that the Administration should consider replacing the incumbent member representing the local fishing industry in PLVAC with another person who was more conversant with the present-day situation of the industry.</p> <p>The Administration advised that PLVAC had been established for over six years. Members considered it opportune to review its membership. The Administration advised that this was also the Administration’s plan and that PLVAC would be renamed as Local Vessels Advisory Committee upon commencement of the Ordinance.</p> | <p>The Administration to take action as set out in paragraph 3(a)</p> |
| 001802 – 003146 | <p>Administration Mr WONG Yung-kan Mr SIN Chung-kai Chairman Mr CHAN Kam-lam</p> | <p>Review of the provision of typhoon shelter facilities and the regulations governing the use of typhoon shelters</p> <p>The manner in which applications from overlength vessels to enter a typhoon shelter would be considered by MD</p> <p>The Administration advised that it would keep in view the utilization of typhoon shelters. It was exploring room for relaxing the length restriction of those relatively new typhoon shelters with low utilization rate. In doing so, the physical constraints of the typhoon shelters would be taken into account, and safety would remain the primary consideration.</p> <p>Members were of the view that the problem of inadequate typhoon shelter facilities had existed for some years. The length restriction of some typhoon shelters was too restrictive in light of present-day circumstances. They urged the Administration to conduct a comprehensive review. Members agreed that the matter should be followed up by the Panel on</p> | <p>The Administration to take action as set out in paragraph 3(b)</p> |

| Time marker | Speaker | Subject(s) | Action required |
|---|--|--|--|
| | | Economic Services. | |
| <i>Clause-by-clause examination of the Bill</i> | | | |
| 003147 – 004135 | Chairman Administration ALA2 | Members agreed that the Bills Committee would scrutinize the Chinese version of the Bill first <i>Clause 2 - Interpretation</i> Definition of “crane” | Administration to take action as set out in paragraph 3(c) above |
| 004136 – 005236 | Administration Chairman Mr WONG Yung-kan | <i>Clause 3 – Application</i> <i>Clause 4 – Authorization of surveyors</i> <i>Clause 5 – Section added</i> The Administration would move Committee Stage amendments (CSAs) to set out in section 7 and new section 7A the relevant factors to be considered by the Director in attaching conditions to the authorization of surveyors and recognition of government authorities. The Administration advised that in view of the close ties between Hong Kong and Guangdong, the Government had discussed with the Register of Fishing Vessel of Guangdong and the China Classification Society regarding the proposed new vessel survey regime and good mutual understanding about the proposed authorization/recognition arrangements had been established. That said, the proposed authorization and recognition mechanisms were open to any surveyor and government authority who/which could meet the standards of authorization/recognition, as the policy objective was to provide ship owners with more choices of surveyors. | Administration to move CSAs to Clauses 4 and 5 |
| 005237 – 005906 | Administration Chairman Mr WONG Yung-kan | <i>Clause 6 – Application</i> The Administration advised that for “banana boat” (which was an air inflated pleasure boat and when in use, was towed by another boat fitted with an engine), the person in the towing boat would be held legally accountable for any danger caused by the operation of the banana boat. | |
| 005907 – 010000 | Administration Chairman | <i>Clause 7 – Certificated local vessel must be licensed</i> <i>Clause 8 – Section added</i> | |

| Time marker | Speaker | Subject(s) | Action required |
|-----------------|------------------------------------|--|--|
| 010001 – 010849 | Administration Chairman ALA2 | <p><i>Clause 9 – Part VA added</i> <i>New sections 23A to 23D</i></p> <p>ALA2 drew members’ attention that it was specified under Clause 1(3) that new section 23B(1)(c) should come into operation 6 months after the day appointed for the commencement of the Ordinance.</p> <p>The Administration advised that –</p> <p>(a) new section 23B(1)(c) covered all the local vessels which were presently not required to carry third party risks insurance. The compulsory third party risk insurance requirements would take effect on these local vessels 6 months after the day appointed for the commencement of the Ordinance; and</p> <p>(b) the local vessels covered under new section 23B(1)(a) and (b) were currently required to carry third party risks insurance under the existing Part XIVA of the Merchant Shipping Ordinance (Cap. 281) and the compulsory third party risk requirements under Cap. 548 would take immediate effect on them upon commencement of the latter Ordinance.</p> <p>The Administration advised that Class IV of local vessels under the Ordinance consisted of three types of pleasure vessels.</p> | |
| 010850 – 011609 | Administration ALA2 | <p><i>New Sections 23E-23H</i></p> <p>ALA2 requested the Administration to consider replacing “provisions” in new section 23E(2) with “provision” so that the Chinese version and English version would tally with each other.</p> <p>ALA2 advised that the Administration had agreed to move a CSA to replace “subsection (3)” with “subsection (1)” in new section 23F(4).</p> <p>The Administration advised that new section 23G(1) was modeled on the corresponding provision in the Motor Vehicles Insurance (Third Party Risks) Ordinance (Cap. 272).</p> <p>The Administration would move a CSA to replace “in whose favour the policy was issued” in new section 23G(2)(b) and other</p> | Administration to move CSAs as appropriate |

| Time marker | Speaker | Subject(s) | Action required |
|--------------------|---|--|--|
| | | provisions with “insured by the policy”. | |
| 011610 – 012821 | Administration Mr SIN Chung-kai Chairman | <i>New Sections 23G and 23I</i> The Administration acknowledged that under new section 23G(1), it was possible that the third party concerned would not be paid fully or partly the damages awarded by the court due to the authorized insurer concerned not being notified of the bringing of the proceedings before or within 7 days after the commencement of the proceedings. The provision was however necessary to safeguard the right of an authorized insurer to be heard in the proceedings. | |
| 012822 – 013054 | Administration | <i>New section 23J</i> | |
| 013055 – 013120 | Administration Chairman | <i>New section 23K</i> The Administration would consider refining the drafting of new section 23K(3) and (4) with regard to the phrase “shall not be convicted of an offence”. | Administration to move CSAs as appropriate |
| 013121 – 013257 | Administration Chairman | <i>Clause 10 – Interpretation</i> <i>Clause 11 – Duty to report collisions, etc.</i> | |
| 013258 – 015742 | Administration Chairman Mr CHAN Kam-lam Mr WONG Yung-kan | <i>Clause 12 – Sections added</i> Mr WONG Yung-kan expressed concern on how the Director would exercise his power under new section 63A(2). The Administration advised that any restriction imposed under new section 63A(2) would be for the sole purpose of ensuring safe operation of the vessel concerned. Instead of determining the operating areas for individual vessels on a case-by-case basis, MD determined the operating areas for different types of local vessels in consultation with the respective industries/trades. Mr WONG highlighted that notwithstanding protracted discussions at the Working Group on Fishing Vessels under PLVAC, the Administration refused to take heed of the request of the fishery industry to relax the restriction on open deck fishing vessels with a length below 8 metres which prohibited the vessels from operating anywhere outside the waters of Hong Kong. The restriction was unreasonable as many of these vessels were | |

| Time marker | Speaker | Subject(s) | Action required |
|---|----------------|--|---|
| | | <p>no longer wooden vessels but made of robust materials and were fitted with modern safety equipment.</p> <p>The Administration advised that under the relevant international convention, MD was required to develop jointly with all the regional authorities common standards for small fishing vessels with an overall length under 24 metres.</p> <p>The Administration undertook to provide a written response to the concerns expressed by members.</p> | <p>Administration to take action as set out in paragraph 3(d)</p> |
| <i>Agenda Item III – Any other business</i> | | | |
| 015743 – 015932 | Chairman | - Date of next meeting | |