

**立法會**  
*Legislative Council*

LC Paper No. CB(1)303/05-06

Ref: CB1/BC/10/04

**Report of the Bills Committee  
on Merchant Shipping (Local Vessels and  
Miscellaneous Amendments) Bill 2005**

**Purpose**

This paper reports on the deliberations of the Bills Committee on Merchant Shipping (Local Vessels and Miscellaneous Amendments) Bill 2005 (the Bill).

**Background**

2. The port of Hong Kong is served by vessels operating within Hong Kong for various purposes, including river trade vessels registered in the Mainland of China or Macau, and employed in trading to or from Hong Kong with a relevant certificate issued by a government authority of the Mainland of China or Macau. These vessels are termed as local vessels as distinct from ocean going vessels engaged in international voyages.

3. Over the years, local vessels have been governed by legal provisions scattered in various ordinances and subsidiary legislation. This is not user-friendly to owners and operators of local vessels. In July 1999, the Legislative Council enacted the Merchant Shipping (Local Vessels) Ordinance (Cap. 548) (“the Ordinance”), which consolidated the scattered provisions into a single piece of legislation dedicated to local vessels. The Ordinance also updated marine legislation to meet the local shipping industry’s needs as well as enhance the safety standards of local vessels. The Ordinance has not yet come into operation pending the enactment of all necessary subsidiary legislation.

4. The implementation of the Ordinance entails the making of 10 pieces of subsidiary legislation. The Legislative Council passed five of them in the

2001-04 legislative sessions<sup>1</sup>. The Administration is now finalizing the drafting of the remaining five pieces of subsidiary legislation and plan to table them after the passage of the Bill. These include the Merchant Shipping (Local Vessels) (Works) Regulation, the Merchant Shipping (Local Vessels) (Safety Survey) Regulation, the Merchant Shipping (Local Vessels) (Compulsory Third Party Risks Insurance) Regulation, the Merchant Shipping (Local Vessels) (General) Regulation, and the Merchant Shipping (Local Vessels) (Fees) Regulation.

### **The Bill**

5. The Bill proposes a number of improvements to the regulatory regime for local vessels. The major one is the addition of a new Part VA to prescribe compulsory requirements for all local vessels to obtain third party risk insurance. The Bill will also make miscellaneous amendments to marine-related legislation. The amendments are necessary to facilitate the discharge of duties by the Director of Marine (“the Director”) and ensure consistency in port operation requirements which are equally applicable to both local vessels and ocean-going vessels. The Bill will make consequential amendments to primary and subsidiary legislation that will be affected by the enactment of the Ordinance and subsidiary legislation made under it.

### **The Bills Committee**

6. The House Committee agreed at its meeting on 20 May 2005 to form a Bills Committee to study the Bill. Chaired by Hon Miriam LAU Kin-ye, the Bills Committee held a total of four meetings to discuss the Bill. The membership list of the Bills Committee is in **Appendix I**.

7. The Bills Committee has invited views from the public. A list of organizations which had given views to the Bills Committee is in **Appendix II**.

### **Deliberations of the Bills Committee**

8. The Bills Committee is generally in support of the Bill, which seeks to ensure effective operation of the Ordinance and provide for better control of vessels. The Bills Committee also considers it necessary to extend the requirement of compulsory third party risks insurance to all locally certificated

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<sup>1</sup> The five pieces of subsidiary legislation are :

- Merchant Shipping (Local Vessels) (Dwelling Vessels) Regulation (Cap. 548 sub. leg. A)
- Merchant Shipping (Local Vessels) (Ferry Terminals) Regulation (Cap. 548 sub. leg. B)
- Merchant Shipping (Local Vessels) (Conduct of Inquiries) Rules (Cap. 548 sub. leg. C)
- Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548 sub. leg. D)
- Merchant Shipping (Local Vessels) (Typhoon Shelters) Regulation (Cap. 548 sub. leg. E)

and river trade vessels alike eventually so as to enhance protection for third parties. In the course of deliberation, the Bills Committee has met with representatives from the fishing industry and ship repair industry, and examined in detail the concerns raised by them over the safety and survey requirements of fishing vessels and relative competitiveness of the ship repair industry. The Bills Committee also takes the opportunity to review the provision of typhoon shelters as well as the effectiveness of the existing consultation mechanism to gauge the views of the marine-related industries. Details of the deliberations are set out below.

#### Recognition of government authority (Clause 5)

9. Under section 7 of the Ordinance, the Director may authorize in writing a person, or a person belonging to a class of persons, who is not a public officer to be a surveyor for the purposes of the Ordinance subject to such conditions, if any, as the Director thinks fit and specified in the authorization. Clause 5 of the Bill proposes to add a new section 7A which provides that the Director may recognize any government authority for the purposes of carrying out any survey and approving any plan for any local vessel.

10. The ship repair industry has expressed concern about the new vessel survey regime. They are worried that with the new arrangements for survey of local vessels to be conducted by authorized surveyors, providers of ship repair services in the Mainland may employ an authorized surveyor from Hong Kong to drive down the overall cost of undertaking survey and related repair works in the Mainland, thus reducing the competitiveness of Hong Kong's ship repair sector, and, in turn, the viability of their operation.

11. On the justifications for the modification to the vessel survey regime, the Administration advises that both section 7 and the new section 7A of the Ordinance aim to provide ship owners and operators with a wider range of choices on vessel survey service and hence increase the flexibility of their operation. These provisions have the support of the Provisional Local Vessels Advisory Committee ("PLVAC"), which includes representatives from a wide spectrum of the local maritime community.

12. With regard to the impact on the ship repair industry, the Bills Committee notes from the Administration that in order to ensure smooth implementation, the new vessel survey regime will be taken forward in four phases according to types of vessels and survey works. The transition from the commencement of the Ordinance to full implementation of the new vessel survey regime will take about 2 years and will be reviewed in light of experience. The possible effect on the ship repair sector will not be immediate, and players in that sector should have time to adjust to the new arrangements.

13. Upon implementation of the new vessel survey regime, the Marine Department (“MD”) would continue to provide vessel survey services at a prescribed fee. However, it is envisaged that with market competition, the fees that would be charged by authorized surveyors would be affordable, and probably lower than that charged by MD.

14. Regarding the concern as to whether the quality of survey works will be affected as a result of the implementation of the new vessel survey regime, the Administration assures the Bills Committee that in order to ensure the quality of survey works conducted by authorized surveyors/recognized government authorities under the new regime, the Director will carry out audit check on surveys and plans approved by authorized surveyors, and recognized government authorities. The specific requirements for conducting vessel surveys by authorized surveyors and recognized government authorities will be set out in Codes of Practice to be issued by the Director under section 8 of the Ordinance. In addition, the detailed conditions of authorization and recognition will be set out in writing when the Director grants authorization and recognition. For instance, it will be a condition of authorization that an authorized surveyor must not engage in any service that may result in a conflict of interest with the performance of vessel survey under the Ordinance. It will be provided in subsidiary legislation that upon the completion of survey, the authorized surveyor is required to submit a survey report, in such form as the Director may specify and to be given by way of declaration, to the Director. The report should contain particulars of the vessel under survey, as well as other information that is relevant to the issue of the certificate applied for. It forms the basis on which the Director is to decide whether or not to approve the application.

15. The Bill provides that the Director may impose any conditions as he thinks fit for the purpose of recognition of government authority for carrying out any survey and approving any plan under the Ordinance (new section 7A). A similar provision is provided for in section 7 of the Ordinance in relation to the authorization of surveyors. The Bills Committee considers that the present drafting of the legislation does not require the Director to qualify, where appropriate, its authorization or recognition having regard to the competence of the person authorized or government authority recognized. The Bills Committee is concerned about how the Director may exercise the powers to authorize registered professional engineers under section 7 of the Ordinance and to recognize government authorities under the proposed new section 7A. As per the suggestion of the Bills Committee, the Administration agrees to set out in these two sections the relevant factors, (including the experience and competency of the person or government authority concerned) to be considered by the Director in attaching conditions to the authorization/recognition. The Administration will move Committee Stage amendments (CSAs) to this effect.

Compulsory third party risks insurance (Clause 9)

16. At present, the requirements of compulsory third party risks insurance are imposed on launches, ferry vessels and pleasure vessels under the existing Part XIVA of the Merchant Shipping Ordinance (Cap. 281). The existing minimum amount of third party risks insurance is \$0.6 million for pleasure vessels and \$3 million for launches and ferries. To enhance protection for third parties, the Bills Committee supports the proposal to extend the compulsory third party risks insurance requirement to all locally certificated vessels.

17. The Bills Committee notes that upon enactment of the Ordinance, the statutory levels of insurance cover will also be revised and details will be set out in the Merchant Shipping (Local Vessels) (Compulsory Third Party Risks Insurance) Regulation to be made in due course. The proposed minimum liability covers for different types of local vessels are as follows:

<b>Types of local vessels</b>	<b>Minimum liability cover</b>
(i) Vessels with no fare-paying passengers	\$1 million
(ii) Vessels with up to 12 fare-paying passengers	
(iii) Kaitos and shuttle passenger sampans in typhoon shelters	
(iv) Vessels with more than 12 fare-paying passengers, except those in (iii) above	\$5 million

18. Regarding the implementation programme, the Bills Committee notes that the compulsory third party risks insurance will be applied to local vessels by two stages.

- (a) First Phase - The existing compulsory third party risks insurance requirements (applicable only to pleasure vessels, launches and ferry vessels) will be retained. This phase will commence as soon as the Ordinance comes into operation.
- (b) Second Phase - The compulsory third party risks insurance requirements will be extended to all other locally certificated vessels (except laid-up vessels and small non-mechanically propelled vessels), and new statutory levels of insurance cover as shown above will apply. This phase will come into effect six months after the commencement of the Ordinance. At the same time, river trade vessels which enter into the waters of Hong Kong will also be subject to compulsory third party risks

insurance requirements<sup>2</sup>.

19. The Bills Committee has examined whether ship owners or operators of vessels would encounter any problem in taking out insurance. According to the Administration, at present, there are about 80 insurers authorized under the Insurance Companies Ordinance (Cap. 41) to underwrite insurance in respect of liability for ships. These insurers will be eligible to underwrite insurance for local vessels in future. The compulsory insurance requirements have been imposed on launches, ferries and pleasure vessels for years. Ship owners or operators of these vessels have not encountered any problem in taking out insurance. The Administration has obtained the agreement of the Insurance Authority to provide assistance should local vessel operators encounter difficulty in taking out insurance following commencement of the Ordinance.

20. To further enhance the protection for victims of accidents, the Bills Committee has examined whether a mechanism similar to the Motor Insurers' Bureau of Hong Kong<sup>3</sup> should be established. Some members take the view that with the establishment of a mechanism similar to the Motor Insurers' Bureau, victims of marine accidents would be able to recover damages awarded to them even if insurers fail to meet their obligations for some reasons.

21. The Administration points out that as there are only some 13 000 local vessels, the amount of contribution required of each vessel for establishing a compensation fund is likely to be fairly high and this may have significant financial implications on the trade. Further, unlike road traffic accidents, the scenario in which a vessel involved in a marine accident occurred within the Hong Kong waters cannot be identified and traced is rare. When any accident occurs, the MD and the Marine Police usually can ascertain the licence number and location of the vessel(s) concerned fairly quickly through investigation with the help of their surveillance systems. Vessels involved in any incident are also required by law to report the incident to the MD or the Police. The Administration therefore considers that it would not be appropriate to apply a mechanism similar to the Motor Insurers' Bureau of Hong Kong to local vessels.

22. However, in view of members' concern about the need to safeguard the interests of third parties and trade operators which have taken out insurance in compliance with the statutory requirements, the Administration undertakes

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<sup>2</sup> Since river trade vessels registered in the Mainland and Macau are not local certificated vessels, the requirement for them to take out compulsory third party risks insurance whilst they remain in the waters of Hong Kong will be set out in the Merchant Shipping (Local Vessels) (General) Regulation to be made in due course.

<sup>3</sup> The Motor Insurers' Bureau of Hong Kong is a company incorporated in Hong Kong and limited by guarantee. All insurance companies in Hong Kong who are authorized by the Hong Kong Government to write motor vehicle insurance are required to be members of the Bureau. Each member has entered into an agreement with the Bureau to contribute such funds as may be required by the Bureau to meet its objectives.

to conduct a review when the new compulsory insurance requirements have come into force for a period of time. In the review, the Administration will consult the trade and take into account the experience of the operation of the new provisions.

*Vessels users' obligation in respect of third party risks insurance requirements*

23. The Bills Committee notes that under the proposed section 23C, no owner, charterer or coxswain of a local vessel may use, or cause or permit other person to use, the vessel in the waters of Hong Kong unless there is in force such policy of insurance as complies with the proposed section 23D. The Bills Committee has sought clarification of the circumstance under which an insurance policy must be in force, particularly the interpretation of the word "use" in the provision.

24. The Administration points out that "use" normally means "inter alia, make use of a thing especially for a particular end or purpose; utilize". According to case law in the context of motor vehicle legislation, "use" means "have the use of a motor vehicle on the road", and a car owner is obliged to take out third party risks insurance even if his car can only be moved on the road but cannot be driven. Applied to vessels, the meaning of "use" is therefore wider than "navigate". It may include any use of a vessel by the owner, charterer or coxswain for a particular purpose. For example, a vessel which is lying at the waters of Hong Kong and awaiting repair service is also regarded as in "use" and subject to compulsory third party risks insurance requirements.

25. On the circumstances to which the defence provision under the proposed section 23C(3) may apply, the Administration points out that the test of "due diligence to prevent the contravention to which the charge relates" is an objective test. The test was approved by the Court of Appeal in *HKSAR v Tan Say-seng* [2000] HKC 236. "Due diligence" is defined as "such diligence as an ordinarily prudent and diligent man would exercise under the circumstances of his case". The Court applies the test to determine whether the defendant has a defence of "due diligence". Lack of financial means to pay for an insurance policy is unlikely to be relied on as a defence since the person concerned could prevent the vessels from being used in order to comply with the law.

Survey, approval of plans and inspection of vessels

26. The new section 89(1)(j) (clause 17) provides that the Secretary for Economic Development and Labour may make regulations in respect of local vessels for approval of plans of vessels among other things. In the course of deliberation, concerns have been raised that upon the enactment of the Ordinance, the Secretary may impose a new requirement for wooden vessel

owners to submit plans for approval by the Director which will unduly increase the operating cost of the fishing industry.

27. The Administration clarifies that at present, there is no plan to do so. The introduction of any such new requirement will be by means of subsidiary legislation, which will be subject to negative vetting by the Legislative Council.

#### Construction and survey requirements for steel fishing vessels

28. The Bills Committee notes the concerns expressed by the fishing industry about the survey requirements for steel fishing vessels. The fishing industry takes the view that the survey requirements for steel fishing vessels (M9) under the present surveying regime for local vessels are too stringent. This has unduly affected the operation of the industry. In their opinion, the survey requirements for steel fishing vessels can simply follow those of wooden fishing vessels (M6) which have been in use for years and have proven to be effective in meeting the operational requirements of the local shipping industry and safety standards of local vessels.

29. According to the Administration, the international safety requirements of fishing vessels are prescribed in the Torremolinos International Convention for the Safety of Fishing Vessels, 1977 (the Convention). As members of the International Maritime Organization are making good progress in subscribing to the Convention, the Convention is expected to commence internationally soon.

30. In order to uphold Hong Kong's status as an international maritime centre, the Administration has advised the Bills Committee that the Government is committed to ensuring compliance of locally certificated fishing vessels with internationally accepted safety standards. It is also in the interest of these fishing vessels to meet such standards or they may not be allowed entry by adjacent jurisdictions which adopt the international standards under the Convention.

31. The Bills Committee notes that the safety requirements for local vessels to be introduced, including fishing vessels, will be prescribed in subsidiary legislation and Codes of Practice to be issued by the Director. The Administration assures members that the Director will consult the fishing industry through the PLVAC (or the Local Vessels Advisory Committee (LVAC) upon the enactment of the Ordinance) and its subcommittees (such as the Fishing Vessel Working Group and Technical Subcommittee) when developing the Codes of Practice. As stipulated in the Ordinance, the LVAC shall comprise of experts from the local maritime industry. The consultation mechanism provided in the Ordinance will ensure that the views and concerns of the industry will be taken into account in formulating the Codes of Practices,

whilst at the same time safeguarding navigational safety in Hong Kong waters.

#### Safety requirements for P4 fishing sampan

32. The new section 63A(2) (clause 12) provides that the Director may endorse on a certificate that a vessel is not fit to operate safely beyond the waters of Hong Kong or in such other waters as are specified in the certificate in respect of a survey performed on that local vessels. In the course of deliberation, concern has been raised that the Director may exercise the power under the new section 63A(2) to restrict the operating areas of P4 fishing sampan<sup>4</sup> which will, in turn, affect the viability of the industry and the livelihood of fishermen. The fishing industry urges the Administration to relax the present restriction on P4 sampans which prohibits the vessels from operating anywhere outside the waters of Hong Kong. They take the view that the restriction is unreasonable as many of these vessels are made of robust materials and fitted with modern safety equipment.

33. The Administration advises that P4 sampans are mainly used for fish pond culturing within specified areas in the waters of Hong Kong. The current arrangement is that P4 sampans must not be operated outside the restricted area specified in the operator's certificate. In drawing up the safety standards of different types or classes of local vessels, the primary consideration of the Administration is marine safety. The Director will consult the fishing industry through the LVAC and its subcommittees (such as the Fishing Vessel Working Group and Technical Subcommittee). The consultation mechanism provided in the Ordinance will ensure that the views and concerns of the industry will be taken into account in formulating the Codes of Practice, whilst at the same time safeguarding navigational safety in Hong Kong waters.

34. The Bills Committee considers that the Administration should explore means to assist the fishing industry to comply with the safety requirements imposed by the Administration so that their vessels can operate freely and safely within and beyond Hong Kong waters. The Bills Committee urges the Administration to continue its work in this respect.

#### Composition of the Provisional Local Vessels Advisory Committee

35. The Bills Committee notes the concerns expressed by some deputations that there is a need to further enhance the existing consultation mechanism so that the views expressed by different associations of the industry can reach PLVAC direct and their concerns taken into account before a decision is made. In this respect, the Bills Committee has examined the

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<sup>4</sup> P4 sampan is an open deck vessel of length not exceeding 10 metres and fitted with an outboard engine of power not exceeding 15 horsepower. It should carry no more than 4 persons.

possible areas for improvement and the need for reviewing the composition of PLVAC.

36. The Bills Committee notes that PLVAC was established in 1991 to advise the Director on matters relating to the management, control, operations and standards of safety of local vessels, including marine activities associated with or affecting local vessels. With the commencement of the Ordinance, the functions currently performed by the PLVAC will be taken over by the LVAC.

37. The Bills Committee takes the view that the composition of LVAC should be reviewed from time to time to ensure a broad and balanced representation. The Bills Committee also urges the Administration to review the nomination mechanism to see how various sectors in the local maritime community can nominate representatives to LVAC, given that different associations may have different views because of their diverging interests. In order to enhance the communication between LVAC and the relevant trades, the Administration should also consider co-opting representatives of the relevant industry into the subgroups formed under LVAC to study specific matters. This will ensure that the views and comments expressed by the trade can reach LVAC direct and their concerns taken into account before a decision is made.

#### Provision of typhoon shelter facilities and the relevant regulations

38. The Bills Committee has taken the opportunity to review the provision of typhoon shelter facilities in the territory. The Bills Committee takes the view that the problem of inadequate typhoon shelter facilities has existed for some years. The restriction on the use of typhoon shelters based on vessel length as prescribed in Merchant Shipping (Local Vessels) (Typhoon Shelters) Regulation (Cap. 548 sub. leg. E) is too restrictive in light of present-day circumstances.

39. The Administration has advised that typhoon shelters in Hong Kong are designed and built to protect local vessels from severe weather conditions, especially from typhoons. Half of them are built for vessels of length up to 30.4 metres while the remaining ones may accommodate vessels of length up to 50 metres. Relaxing the length restriction may cause danger to users of the typhoon shelters because of the physical constraints of their size, configuration and fairway. It will also reduce the number of vessels that can be accommodated in the shelters. These considerations apply to all existing shelters, especially those which are popular places of stay for small vessels on normal days, such as the shelters at Aberdeen, Shau Kei Wan and Causeway Bay.

40. According to the Administration, overlength vessel owners may apply to the Director for permission to enter a typhoon shelter. The Director will

consider such applications on a case-by-case basis in light of all relevant considerations, including the occupancy rate and constraints of the typhoon shelter, length and draft of the vessel, grounds for application and weather condition to ensure safety. For instance, where circumstances permit, an overlength fishing vessel may be permitted to deliver its catch to a fishery market inside a typhoon shelter upon application.

41. In addition to the above-mentioned permit arrangement, MD is also exploring the room for relaxing the length restriction of relatively newer typhoon shelters with low utilization rate, such as the one at Hei Ling Chau. In considering any possible relaxation, safety remains the priority consideration. Should new typhoon shelters be planned, they will be designed and built having regard to the latest size and needs of local vessels.

42. Notwithstanding the Administration's explanation, the Bills Committee considers that a comprehensive review should be conducted by the Administration and that consideration should be given to expanding the capacity of existing typhoon shelter facilities to cater for the rising demand. The Administration should report the findings of the review to the Panel on Economic Services.

### **Committee Stage amendments**

43. The Administration has accepted the Bills Committee's suggestion to move CSAs to set out the relevant factors to be considered by the Director in attaching conditions to the authorization of surveyors and recognition of government authorities under section 7 of the Ordinance and the proposed new section 7A.

44. The Administration also proposes to move a CSA to remove section 7(6) and the new section 63A(2) of the Ordinance so that the authorized surveyor or the Director, after performing a survey on a local vessel, is not required to endorse on the certificate of survey a statement that the vessel is not fit to operate safely beyond the waters of Hong Kong or in such other waters. The Administration explains that as detailed requirements regarding vessel survey and inspection will be set out in the Codes of Practice to be issued by the Director under section 8 of the Ordinance, there is no need for section 7(6) and the new section 63A(2).

45. The Administration also proposes to amend sections 18 and 20 of the Merchant Shipping (Local Vessels) (Certification and Licensing) Regulation (Cap. 548 D) to clarify the extent to which the Director may restrict the plying area of a local vessel to ensure safety of the vessel. By these two amendments, when the Director issues a full licence or a temporary licence for a local vessel, he can specify plying limits of the local vessel in the relevant licence and the

plying limits are not confined to the waters of Hong Kong.

46. Apart from the above, the Administration will also move a number of CSAs to improve the drafting of the Bill. The Bills Committee will not propose any CSAs.

### **Recommendation**

47. The Bills Committee supports the Bill and recommends the resumption of the Second Reading debate on the Bill on 30 November 2005.

### **Consultation with the House Committee**

48. The House Committee at its meeting on 11 November 2005, supported the recommendations of the Bills Committee in paragraph 47 above.

Council Business Division 1  
Legislative Council Secretariat  
18 November 2005

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

**Membership list**

**Chairman** Hon Miriam LAU Kin-ye, GBS, JP

**Members** Hon CHAN Kam-lam, SBS, JP  
Hon SIN Chung-kai, JP  
Hon WONG Yung-kan, JP

(Total : 4 Members)

**Clerk** Mr Andy LAU

**Legal Adviser** Miss Anita HO

**Date** 2 July 2005

**List of organizations which have given views to the Bills Committee**

1. Tung Yee Shipbuilding & Repairing Merchants General Assn. Ltd
2. Hong Kong Fisheries Development Association
3. Hong Kong Shipowners Association