

## **LEGISLATIVE COUNCIL BRIEF**

### **Freight Containers (Safety) (Amendment) BILL 2006**

#### **INTRODUCTION**

At the meeting of the Executive Council on 28 March 2006, the Council ADVISED and the Chief Executive ORDERED that the Freight Containers (Safety) (Amendment) Bill 2006 (“the Bill”), at Annex, should be introduced into the Legislative Council to provide for the operation of the Freight Containers (Safety) Ordinance (“the Ordinance”) and its subsidiary legislation so as to ensure the safety of containers.

#### **JUSTIFICATIONS**

2. The Ordinance and its four pieces of subsidiary legislation were enacted respectively in May 1997 and May 2001 for the purpose of implementing the International Convention for Safe Containers, 1972 (CSC) in Hong Kong. CSC was adopted by the International Maritime Organization (IMO) to standardize the requirements for testing, inspection and approval of containers, and to prescribe procedures for their maintenance, examination and control so as to ensure safety in their handling, stacking and transportation. Since the enactment of the Ordinance and its subsidiary legislation, there have been changes to trade practices. The amendment Bill aims to address a few outstanding issues so as to bring the Ordinance and its subsidiary legislation into operation. CSC requires that containers used in international transport must be approved by an Administration of a contracting state or by an organization acting on its behalf in accordance with some safety requirements. The Administration or its authorized person will authorize the manufacturer to affix to containers a safety approval plate if the containers meet the prescribed structural safety requirements and test standards. The approval, evidenced by the

safety approval plate granted by one contracting state, should be recognized by other contracting states. The subsequent maintenance of a safety-approved container is the responsibility of the owner, bailee or lessee (as applicable), who is required to have the container periodically examined.

3. The Bill covers four broad categories of amendments as follows -

- (a) to expand the application of the Ordinance to cover the approval of container designs to ensure structural safety, and approval of examination procedures of containers, irrespective of the containers' origin of manufacture. Hitherto, the approval covers only those containers manufactured in Hong Kong<sup>1</sup>. Hong Kong has no such industry nowadays, whereas Mainland China is now a major container manufacturing base. There is thus a practical need to expand the coverage of approval to containers manufactured outside Hong Kong so as to fulfill our international obligation under the CSC;
- (b) to assign the functions of containers approval solely to authorized persons, so that Marine Department would focus on its regulatory and law enforcement functions. The Director of Marine will appoint classification societies, which are international organizations, to approve containers. At present 18 contracting states, including China, the United Kingdom and the United States of America, have authorized classification societies to approve containers;
- (c) to spell out the conditions under which the owner, bailee or lessee (as applicable) of a container would have to remove the safety approval plate from the container. The approval of containers is evidenced by the safety approval plate affixed to the containers. In accordance with the 1991 amendments to CSC, the owner, bailee or lessee (as applicable) of a container shall remove the safety approval plate from the container if the container has been modified in a manner which would render

<sup>1</sup> Notwithstanding that Marine Department does not currently grant approval for design of containers, it does inspect containers through administrative measures to ensure their structural safety, irrespective of the place of manufacture of the containers.

the original approval void, or if it is removed from service without proper maintenance, or in case where the approval ceases to be valid; and

- (d) to empower the Director of Marine to specify by notice published in the gazette the information and documents to be submitted along with an application for approval of examination procedures for containers.

## **THE BILL**

4. The main provisions of the Bill are -

- (a) Clauses 1 and 2 provide for the short title and commencement of the Ordinance;
- (b) Clause 4 expands the application of the Ordinance to cover approval of containers and approval of examination of procedures of containers, irrespective of their place of manufacture;
- (c) Clauses 6, 7, 9, 19 and 20 amend the Ordinance so that the authority to approve container will be vested in the authorized persons;
- (d) Clause 11 provides for the removal of the safety approval plate under certain conditions. An owner, bailee or lessee of a container who contravenes the new requirement commits an offence. It is a defence for a person charged with the offence that at the time of the contravention a bailment, lease, further bailment or further lease is in force and another person should be responsible for ensuring compliance with that requirement;
- (e) Clause 13 empowers the Director of Marine to specify documents and information by notices published in the Gazette;
- (f) Clause 21 amends Schedule 1 to the Ordinance to update the structural safety requirements and tests in order to align with the amendments to CSC in 1983 and 1991;

- (g) Clauses 5, 8, 10, 14 to 18 and 22 make drafting improvements to the Ordinance in the interests of clarity and consistency; and
- (h) Clauses 23 to 30 make consequential amendments to the subsidiary legislation.

## **LEGISLATIVE TIMETABLE**

5. The Bill will be gazetted on 13 April 2006 and introduced into the Legislative Council on 26 April 2006.

## **IMPLICATIONS OF THE PROPOSAL**

6. The proposal is in conformity with the Basic Law, including the provisions concerning human rights. It will not affect the current binding effect of the Ordinances concerned. It also has no economic, productivity, financial, civil service, environmental or sustainability implications.

## **PUBLIC CONSULTATION**

7. We consulted and obtained support from the Legislative Council Panel on Economic Services in February 2006.

8. We have also consulted the local maritime industry through the Port Development Advisory Group of Port Development Council, Maritime Services Task Force of the Maritime Industry Council, Port Operations Committee, Provisional Local Vessels Advisory Committee and Shipping Consultative Committee. They all supported the proposal.

## **PUBLICITY**

9. A press release will be issued on 12 April 2006. A spokesman will be available to handle enquiries.

## **BACKGROUND**

10. The CSC was adopted by the IMO to standardize the requirements for testing, inspection and approval of containers, and to prescribe procedures for their maintenance, examination and control so as to ensure safety in their handling, stacking and transportation. The CSC and its amendments adopted in 1981, 1983 and 1991 are in force internationally, and have been extended to Hong Kong since 30 May 1997. By 2005, the CSC has been adopted by 77 contracting states.

11. The Ordinance and its four pieces of subsidiary legislation were enacted respectively in May 1997 and May 2001 for the purpose of implementing the CSC in Hong Kong. Since then there have also been changes to trade practices. The amendment Bill addresses the few outstanding issues. On the enactment of the amendment Bill, the Ordinance and its subsidiary legislation will come into operation on a date to be appointed by the Secretary for Economic Development and Labour.

## **ENQUIRIES**

12. Any enquiries on this brief can be addressed to Mr. H M Tung (2852 4602), Chief of Technical Policy of the Marine Department or Mr. Patrick Siu, Assistant Secretary for Economic Development and Labour (2121 2340).

**Economic Development and Labour Bureau**  
**12 April 2006**

**FREIGHT CONTAINERS (SAFETY) (AMENDMENT) BILL 2006**

**CONTENTS**

Clause		Page
<b>PART 1</b>		
<b>PRELIMINARY</b>		
1.	Short title	1
2.	Commencement	1
<b>PART 2</b>		
<b>AMENDMENTS TO THE FREIGHT CONTAINERS (SAFETY) ORDINANCE</b>		
3.	Long title amended	1
4.	Application	1
5.	Conditions of use	2
6.	Approval of containers individually	3
7.	Approval by design type	4
8.	Approval issued under the Convention outside Hong Kong	4
9.	Validity of approval	5
10.	Fixing of safety approval plate	5
11.	Section added	
	10A.    Removal of safety approval plate	5
12.	Examination of containers	7
13.	Applications for approval of examination procedures	8
14.	Containers displaying an examination date that has passed	9
15.	Section added	
	17A.    Offences under sections 14 to 17	10
16.	Powers of Director and inspectors	10
17.	Offences under section 4	10

18.	Offences under sections 14 to 17	11
19.	Appeals	11
20.	Schedule amended	11
21.	Structural safety requirements and tests	11
22.	Safety approval plate	13

### PART 3

#### CONSEQUENTIAL AMENDMENTS TO THE FREIGHT CONTAINERS (SAFETY)(APPLICATIONS FOR APPROVAL OF CONTAINERS) REGULATION

23.	Interpretation	13
24.	The manner that applicant shall present container for examination	13
25.	Notification of modification to approved individual container	13
26.	The manner that applicant shall present prototype container for examination	15
27.	Production of new series of containers in accordance with approved design type	15
28.	Duties of person who has been issued with approval in respect of container design type	15
29.	Giving reasons of refusal	15

### PART 4

#### CONSEQUENTIAL AMENDMENTS TO THE FREIGHT CONTAINERS (SAFETY)(ARRANGEMENTS FOR AUTHORIZED PERSONS) ORDER

30.	Functions of authorized person	16
-----	--------------------------------	----

## A BILL

To

Amend the Freight Containers (Safety) Ordinance.

Enacted by the Legislative Council.

## PART 1

### PRELIMINARY

#### **1. Short title**

This Ordinance may be cited as the Freight Containers (Safety) (Amendment) Ordinance 2006.

#### **2. Commencement**

This Ordinance shall come into operation on a day to be appointed by the Secretary for Economic Development and Labour by notice published in the Gazette.

## PART 2

### AMENDMENTS TO THE FREIGHT CONTAINERS (SAFETY) ORDINANCE

#### **3. Long title amended**

The long title of the Freight Containers (Safety) Ordinance (Cap. 506) is amended by repealing “in use in Hong Kong,”.

#### **4. Application**

Section 3(1) is repealed and the following substituted –

“(1) Except as provided in subsection (2) and sections 5(1A), 6(5) and 13(1), this Ordinance applies in relation to any container in Hong Kong, whether it is manufactured in Hong Kong or elsewhere.”.



## 5. Conditions of use

(1) Section 4(1)(c) is amended by repealing “in accordance with” and substituting “within the meaning of”.

(2) Section 4(1)(d) is repealed and the following substituted –

“(d) the container is examined in accordance with a procedure prescribed or approved under section 12; and”.

(3) Section 4(2) is repealed and the following substituted –

“(2) Where it is an express term of a bailment or lease of a container that the bailee or lessee shall be responsible for ensuring that –

- (a) the container has a valid safety approval plate fixed to it in accordance with section 10 or the Convention, he shall not use or permit the container to be used unless a valid safety approval plate is fixed to the container in accordance with section 10;
- (b) the container is maintained, he shall not use or permit the container to be used unless the container is properly maintained within the meaning of section 11;
- (c) the container is examined, he shall not use or permit the container to be used unless the container is examined in accordance with a procedure prescribed or approved under section 12; and
- (d) all markings on the container showing maximum operating gross weight are consistent with the maximum gross weight information on the safety approval

plate, he shall not use or permit the container to be used unless all markings on the container showing maximum operating gross weight are consistent with the maximum gross weight information on the safety approval plate.”.

(4) Section 4 is amended by adding –

“(2A) A person who contravenes subsection (1) or (2) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 1 year.”.

(5) Section 4(3) is amended by repealing “section 20” and substituting “subsection (2A)”.

(6) Section 4(3) is amended, in the Chinese text, by repealing “受託保管或” and substituting “委託保管或”.

(7) Section 4(3) is amended, in the Chinese text, by repealing “即為有效的” and substituting “即可以此作為”.

## **6. Approval of containers individually**

(1) Section 5 is amended by adding before subsection (1) –

“(1A) This section applies in relation to any container, whether it is manufactured or used in Hong Kong or elsewhere.”.

(2) Section 5(1) is amended by repealing “the Director or to”.

(3) Section 5(2) is amended by repealing “and by payment of the prescribed fee”.

(4) Section 5(3) is amended by repealing “prescribed manner” and substituting “manner specified by the authorized person”.

(5) Section 5(4) is amended by repealing “Director or”.

(6) Section 5(5) is amended by repealing everything after “experienced” and substituting “to exercise the powers and perform the

functions conferred on an authorized person under this section to be an authorized person.”.

## **7. Approval by design type**

(1) Section 6(1) is amended by repealing “the Director or to”.

(2) Section 6(2) is amended by repealing “and by payment of the prescribed fee”.

(3) Section 6(3) is amended by repealing “prescribed manner” and substituting “manner specified by the authorized person”.

(4) Section 6(4) is amended by repealing “Director or”.

(5) Section 6(5) is amended by repealing everything after “valid approval” and substituting “for the purposes of this Ordinance in respect of every container of the design type series, whether the container is manufactured or used in Hong Kong or elsewhere.”.

(6) Section 6(6) is amended by repealing “granted” and substituting “issued”.

(7) Section 6(6)(a) is amended by repealing “Director” and substituting “authorized person who has issued the approval”.

(8) Section 6(6)(b) is amended by repealing “Director” and substituting “authorized person who has issued the approval”.

(9) Section 6(7) is amended by repealing everything after “experienced” and substituting “to exercise the powers and perform the functions conferred on an authorized person under this section to be an authorized person.”.

## **8. Approval issued under the Convention outside Hong Kong**

(1) Section 7(1) is amended by repealing “, territory or area” and substituting “or place”.

(2) Section 7(2)(a) is amended by repealing everything after “the authority” and substituting –

“of –

- (i) a government of a country which has ratified, accepted, approved or acceded to the Convention; or
- (ii) a government of a place to which the Convention applies; and”.

## **9. Validity of approval**

(1) Section 9(2)(b) is amended by repealing “(whether or not it was issued by the Director)”.

(2) Section 9(2) is amended by repealing everything after “subsection (1)” and substituting a full stop.

(3) Section 9 is amended by adding –

“(2A) A declaration may be made under subsection (2) only if the container does not comply with any requirement of this Ordinance.”.

## **10. Fixing of safety approval plate**

(1) Section 10(1) is amended by repealing “may” and substituting “shall”.

(2) Section 10(2)(c)(ii) is amended by adding “a procedure prescribed or approved under” after “with”.

## **11. Section added**

The following is added immediately after section 10 –

### **“10A. Removal of safety approval plate**

(1) An owner of a container or, where section 4(2) applies, the bailee or lessee of the container, shall remove the safety approval plate fixed to the container if –

- (a) the container has been modified in a manner –

- (i) which would make it unable to meet the structural safety requirements and test standards specified in Schedule 1; and
  - (ii) which would render the information on the safety approval plate incorrect or inaccurate in a material respect;
- (b) the container is removed from service and it –
- (i) is not properly maintained within the meaning of section 11; or
  - (ii) is not examined in accordance with a procedure prescribed or approved under section 12; or
- (c) the approval issued in respect of the container ceases to be valid under section 9(2) or (3).

(2) A person who contravenes subsection (1) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 1 year.

(3) It shall be a defence to any proceedings under subsection (2) for contravention of subsection (1) that at the time of the contravention a bailment or lease was in force in respect of the container and –

- (a) in the case of an owner, that it was an express term of the bailment or lease that the bailee or lessee, as the case may be, should be responsible for ensuring compliance with subsection (1);

- (b) in the case of a bailee, that he had become a bailor under a further bailment and that it was an express term of the further bailment that the further bailee should be responsible for ensuring compliance with subsection (1);
- (c) in the case of a lessee, that he had become a lessor under a further lease and that it was an express term of the further lease that the further lessee should be responsible for ensuring compliance with subsection (1).”.

## **12. Examination of containers**

(1) Section 12(1) is amended by repealing everything after “of this Ordinance,” and before “a procedure for the examination” and substituting –

“the Director may –

- (a) in relation to any container or class of containers that is approved under section 5 or 6, by order in the Gazette, prescribe; or
- (b) in relation to any container or class of containers that is issued with an approval referred to in section 5, 6 or 7, by a notice in writing to the applicant in an application under section 13, approve,”.

(2) Section 12(4) is repealed and the following substituted –

“(4) Where –

- (a) the owner, bailee or lessee is –
    - (i) resident in; or
    - (ii) established or incorporated in, a contracting party other than Hong Kong;
- and

- (b) the government of that contracting party or a person authorized by the government to act on its behalf has prescribed or approved an examination procedure in relation to a container for the purposes of the Convention,

an examination carried out in accordance with that procedure shall be deemed to be an examination carried out in accordance with a procedure prescribed or approved under subsection(1).”.

- (3) Section 12 is amended by adding –

“(4A) In subsection (4), “contracting party” (締約方) means –

- (a) a country the government of which has ratified, accepted, approved or acceded to the Convention; or
- (b) a place to which the Convention applies.”.

### **13. Applications for approval of examination procedures**

- (1) Section 13(1) is repealed and the following substituted –

“(1) The owner or, where section 4(2)(c) applies, the bailee or lessee of a container specified in subsection (1A) may in writing apply to the Director for approval under section 12(1)(b) of a proposed examination procedure in relation to the container.

(1A) An application made under subsection (1) in respect of a container (whether manufactured or used in or outside Hong Kong) may be made by –

- (a) an owner, bailee or lessee whose container –
  - (i) is approved under section 5; or

- (ii) is manufactured in accordance with a design type approved under section 6;
  - (b) an owner, bailee or lessee who is –
    - (i) resident in Hong Kong; or
    - (ii) established or incorporated in Hong Kong; or
  - (c) an owner, bailee or lessee who is –
    - (i) resident in; or
    - (ii) established or incorporated in, a country or place the government of which has not made any arrangement for prescribing or approving an examination procedure in relation to containers for the purposes of the Convention.”.
- (2) Section 13(2) is repealed and the following substituted –
- “(2) An application under subsection (1) shall –
    - (a) contain or be accompanied by the information or documents specified by the Director by notice published in the Gazette; and
    - (b) be accompanied by the prescribed fee.
  - (2A) A notice under subsection (2) is not subsidiary legislation.”.

#### **14. Containers displaying an examination date that has passed**

Section 15(1) is amended by adding “a procedure prescribed or approved under” before “section 12”.



**15. Section added**

The following is added –

**“17A. Offences under sections 14 to 17**

(1) A person on whom a notice has been served under section 14(1), 15(1) or 16(1) in respect of a container shall not use the container, or permit it to be used, in contravention of any term of the notice.

(2) A person to whom permission is given by the Director under section 14(2), 15(2) or 16(3) in respect of a container shall not do, or permit to be done, anything in relation to the container which is contrary to any term or condition of that permission.

(3) No person shall, without the permission of the Director, remove any container which has been detained under section 14(1), 15(1) or 16(1).

(4) A person on whom a notice has been served under section 16(2) shall comply with the requirements specified in the notice.

(5) A person who without reasonable excuse contravenes subsection (1), (2), (3) or (4) commits an offence and is liable on conviction to a fine at level 4 and to imprisonment for 1 year.

(6) A person who without reasonable excuse fails to comply with a request made by the Director under section 17(1) commits an offence and is liable on conviction to a fine at level 2 and to imprisonment for 3 months.”.

**16. Powers of Director and inspectors**

Section 19(5) is amended by adding “within the meaning of section 11” after “maintained”.

**17. Offences under section 4**

Section 20 is repealed.

## 18. Offences under sections 14 to 17

Section 21 is repealed.

## 19. Appeals

Section 24(1)(a) is repealed.

## 20. Schedule amended

Section 29 is amended, in new item 38 of the Schedule to the Administrative Appeals Board Ordinance (Cap. 442), by repealing paragraph (a).

## 21. Structural safety requirements and tests

(1) Schedule 1 is amended, within the square brackets, by adding “10A,” before “14”.

(2) Schedule 1 is amended, under the heading “**Construction**”, by repealing paragraph (3).

(3) Schedule 1 is amended, under the heading of “1. LIFTING”, in the first column of table (A), by repealing everything after “**Internal loading:**” and substituting –

“1. A uniformly distributed load such that the combined weight of a container and test load is equal to 2 R.

2. In the case of a tank-container, where the test weight of the internal load plus the tare weight is less than 2 R, a supplementary load uniformly distributed over the length of the tank is to be applied to the container, such that the combined weight of the internal load, tare weight and supplementary load is equal to 2 R.

**Externally applied forces:**

Such as to lift the combined weight of 2 R in the manner prescribed (under the heading TEST PROCEDURES).”.

(4) Schedule 1 is amended, under the heading of “1. LIFTING”, in the first column of table (B), by repealing everything after “**Internal loading:**” and substituting –

“1. A uniformly distributed load such that the combined weight of a container and test load is equal to 1.25 R.

2. In the case of a tank-container, where the test weight of the internal load plus the tare weight is less than 1.25 R, a supplementary load uniformly distributed over the length of the tank is to be applied to the container, such that the combined weight of the internal load, tare weight and supplementary load is equal to 1.25 R.

**Externally applied forces:**

Such as to lift the combined weight of 1.25 R in the manner prescribed (under the heading TEST PROCEDURES).”.

(5) Schedule 1 is amended, under the heading of “2. STACKING”, in the first column of the table, by repealing everything after “**Internal loading:**” and before “**Externally applied forces:**” and substituting –

“1. A uniformly distributed load such that the combined weight of a container and test load is equal to 1.8 R.

2. In the case of a tank-container, it may be tested in tare condition.”.

(6) Schedule 1 is amended, under the heading of “5. LONGITUDINAL RESTRAINT (STATIC TEST)”, in the first and second columns of the table, by repealing everything after “**Internal loading:**” and before “**Externally applied forces:**” and substituting –

<p>“1. A uniformly distributed load such that the combined weight of a container and test load is equal to R.</p> <p>2. In the case of a tank-container, where the test weight of the internal load plus the tare weight is less than R, a supplementary load</p>	<p>The container having the prescribed INTERNAL LOADING shall be restrained longitudinally by is equal to the maximum securing the 2 bottom corner fittings or equivalent corner</p>
---	--

uniformly distributed over the length of the tank is to be applied to the container, such that the combined weight of the internal load, tare weight and supplementary load is equal to R.”. structures at one end to suitable anchor points.

## **22. Safety approval plate**

Schedule 2 is amended, in section 2(d)(i), by adding “or place” after “country”.

## **PART 3**

### **CONSEQUENTIAL AMENDMENTS TO THE FREIGHT CONTAINERS (SAFETY)(APPLICATIONS FOR APPROVAL OF CONTAINERS) REGULATION**

## **23. Interpretation**

Section 2 of the Freight Containers (Safety)(Applications for Approval of Containers) Regulation (Cap. 506 sub. leg. A) is amended by repealing the definition of “approving authority”.

## **24. The manner that applicant shall present container for examination**

Section 4 is amended by repealing “approving authority” and substituting “authorized person”.

## **25. Notification of modification to approved individual container**

(1) Section 5(1) is amended by repealing “(“modified container”), the owner of the modified container” and substituting “, the owner or, where section 4(2) of the Ordinance applies, the bailee or lessee, of the container (“modified container”)”.

(2) Section 5(1) is amended by repealing “approving authority” and substituting “authorized person”.

(3) Section 5(2)(c) is amended by repealing everything after “address” and substituting –

“of –

- (i) the owner and his agent (if any);
- (ii) the owner and, where there is a bailment, the bailee, and his agent (if any); or
- (iii) the owner and, where there is a lease, the lessee, and his agent (if any).”.

(4) Section 5(3) is amended by repealing “approving authority” and substituting “authorized person”.

(5) Section 5(3) is amended by repealing “owner requiring the owner” and substituting “owner, bailee or lessee or his agent requiring him”.

(6) Section 5(4) is amended by repealing “approving authority” and substituting “authorized person”.

(7) Section 5(4) is amended by repealing “owner requiring the owner” and substituting “owner, bailee or lessee or his agent requiring him”.

(8) Section 5(5)(a) is amended by repealing “owner” and substituting “owner, bailee or lessee or his agent”.

(9) Section 5(5)(b) is amended by repealing “approving authority” and substituting “authorized person”.

(10) Section 5(5) is amended by repealing “approving authority” and substituting “authorized person”.

(11) Section 5(5) is amended by repealing “(and if the approving authority is not the Director)”.

(12) Section 5(6) is amended by repealing “Where the approving authority” and substituting “Where the authorized person”.

(13) Section 5(6) is amended, in the English text, by repealing “that the approving authority” and substituting “that he”.

(14) Section 5(7) is amended by repealing “owner” and substituting “owner, a bailee or a lessee”.

(15) Section 5(7) is amended by repealing “approving authority” and substituting “authorized person”.

**26. The manner that applicant shall present prototype container for examination**

Section 7 is amended by repealing “approving authority” and substituting “authorized person”.

**27. Production of new series of containers in accordance with approved design type**

(1) Section 8(1) is amended by repealing “approving authority” and substituting “authorized person”.

(2) Section 8(2) is amended by repealing “approving authority” and substituting “authorized person”.

(3) Section 8(4)(b) is amended by repealing “approving authority” and substituting “authorized person”.

**28. Duties of person who has been issued with approval in respect of container design type**

(1) Section 9(1)(a) is amended by repealing “approving authority” and substituting “authorized person”.

(2) Section 9(1)(b) is amended by repealing “approving authority” where it twice appears and substituting “authorized person”.

(3) Section 9(2) is amended by repealing “approving authority” and substituting “authorized person”.

**29. Giving reasons of refusal**

Section 10 is amended by repealing “approving authority” and substituting “authorized person”.

## PART 4

### CONSEQUENTIAL AMENDMENTS TO THE FREIGHT CONTAINERS (SAFETY)(ARRANGEMENTS FOR AUTHORIZED PERSONS) ORDER

#### **30. Functions of authorized person**

Section 4(1)(c) of the Freight Containers (Safety)(Arrangements for Authorized Persons) Order (Cap. 506 sub. leg. C) is amended by repealing “withdrawal of approval” and substituting “a declaration that the approval issued in respect of the container under section 5 or 6 of the Ordinance is no longer valid”.

#### **Explanatory Memorandum**

##### Background

The Freight Containers (Safety) Ordinance (Cap. 506) (“the Ordinance”) and its subsidiary legislation implement in Hong Kong the International Convention for Safe Containers (“Convention”). The main objective of the Convention is to ensure the safe and efficient handling, stacking and transport of containers. It standardizes requirements for the testing, inspection and approval of containers and prescribes procedures for their examination and maintenance.

2. The object of the Ordinance is to safeguard the safety standards of containers used in Hong Kong. It prescribes the requirement relating to the use, approval, maintenance, examination and control of containers. In particular, the Ordinance requires the owner, bailee or lessee of a container to ensure that the container being handled is approved by recognized authorities, fixed with a safety approval plate, properly maintained, examined according to the approved procedures and that markings on a container are consistent with the information on the safety approval plate.

3. The Ordinance was enacted on 1 May 1997. The four pieces of subsidiary legislation were made in May 2001. The Ordinance and its subsidiary legislation are yet to come into operation.

### The Bill

#### Part 1 of the Bill

4. The object of this Bill is to amend the Ordinance and its subsidiary legislation to address a number of outstanding issues in order that the Ordinance and its subsidiary legislation may be brought into operation.

5. Clauses 1 and 2 provide for the short title and commencement of this Bill upon being enacted as Ordinance.

#### Part 2 of the Bill

6. Clause 3 amends the long title of the Ordinance to cover containers irrespective of their place of manufacture.

7. Clause 4 amends section 3(1) of the Ordinance by expanding its application to cover, with certain exceptions, containers in Hong Kong irrespective of their place of manufacture. There are 3 exceptions –

- (a) in the case of approval of containers, clause 6 adds a subsection (1A) to section 5 of the Ordinance to clarify that section 5 applies to any container whether it is manufactured or used in Hong Kong or elsewhere;
- (b) in the case of approval of container design type, clause 7 amends section 6(5) of the Ordinance such that an approval issued in respect of a container design type, is a valid approval in respect of every container of the design type series, whether the containers are manufactured or used in Hong Kong or elsewhere;
- (c) in the case of approval of an examination procedure for containers, clause 13 adds a subsection (1A) to section 13 of the Ordinance to provide that an owner, bailee or lessee of any container may apply for approval under section



13(1) if the owner, bailee or lessee is resident or incorporated in Hong Kong, or is resident or incorporated in a country (whether it is a Convention party) which does not have in place an examination scheme regarding safety of containers.

8. Clause 5 amends section 4(1)(c) of the Ordinance to reflect clearly the fact that section 11 as referred to in that section describes the meaning of “properly maintained”. The clause also amends section 4(1)(d) of the Ordinance to clarify that an owner, bailee or lessee of a container should not use the container unless it is examined in accordance with a procedure prescribed or approved under section 12. The clause recasts section 4(2) of the Ordinance to remove the sandwich clause structure and improves its readability. The clause makes a drafting improvement to section 4 of the Ordinance by adding a subsection (2A). The new subsection (2A) is formerly section 20 of the Ordinance. As it is an offence creating provision, section 20 is moved to section 4 to which it relates for easy reference.

9. Under sections 5 and 6 of the Ordinance, either the Director of Marine (“Director”) or an authorized person appointed by the Director may issue an approval in respect of a container or a container design type.

10. Under the new policy, the authority to approve individual container and container design type will be vested in the authorized person. The Director will not take part in approving any container or container design type.

11. Clauses 6, 7, 9, 19 and 20 respectively amend sections 5, 6, 9, 24 and 29 of the Ordinance to reflect the new policy. As the Director will not carry out any approval work for any container or container design type, any functions conferred on the Director relating to such a duty and any right of a person to appeal against his decision on approval needs to be amended accordingly. Further, since the provision of approval service by an authorized person is a commercial dealing, it is not necessary for the approval fees to be prescribed by law.

12. Clause 11 adds a new section 10A which provides for the removal of the safety approval plate of a container by the owner, bailee or lessee under certain conditions, namely, when the container has been modified or removed from service without properly maintained, or when the approval issued in respect of the container ceases to be valid.

13. An owner, bailee or lessee of a container who contravenes the new requirement commits an offence. It is a defence for a person charged with the offence that at the time of the contravention a bailment, lease, further bailment or further lease is in force and another person should be responsible for ensuring compliance with that requirement.

14. Clause 12 amends section 12(1)(a) of the Ordinance to provide that the Director may prescribe an examination procedure in relation to containers that have been approved under section 5 or 6. The clause amends section 12(4) of the Ordinance to more accurately reflect the meaning of “contracting party”. The clause also provides that an examination carried out in accordance with a procedure prescribed by a contracting party is deemed to be an examination carried out in accordance with a procedure prescribed under section 12(1) of the Ordinance. A definition of “contracting party” is added in the proposed section 12(4A).

15. Under section 13(2) of the Ordinance, an application for approval of examination procedures has to contain or be accompanied by prescribed information or documents. Clause 13 amends section 13(2) to empower the Director to specify the information and documents by notice published in the Gazette. Such a notice is not subsidiary legislation. Clause 13 adds subsection (1A) to section 13 of the Ordinance to provide that an owner, bailee or lessee of any container may apply for approval under section 13(1) if the owner, bailee or lessee is resident or incorporated in Hong Kong, or is resident or incorporated in a country (whether it is a Convention party) which does not have in place an examination scheme regarding safety of containers.

16. Clause 15 re-enacts the repealed section 21 of the Ordinance to become the proposed section 17A. The proposed section 17A follows as close as possible sections 14 to 17 to which it relates for easy reference.

17. Clause 16 amends section 19(5) of the Ordinance to achieve consistency in respect of the term “maintenance” used in sections 4, 10A and 11 of the Ordinance.

18. Clause 17 repeals section 20 of the Ordinance.

19. Clause 18 repeals section 21 of the Ordinance.

20. Clause 21 amends Schedule 1 to the Ordinance to update the structural safety requirements and tests in order to align with the amendments to the Convention in 1983 and 1991. The amendments are concerned with the testing of tank containers.

#### Part 3 of the Bill

21. Since the Director will not carry out any approval work for any container or container design type, clauses 23 to 29 make consequential amendments to sections 2, 4, 5, 7, 8, 9 and 10 of the Freight Containers (Safety)(Applications for Approval of Containers) Regulation (Cap. 506 sub. leg. A) (“Approval Regulation”) to replace all references to “approving authority” with “authorized person”.

22. Clause 25 further amends section 5 of the Approval Regulation to expand the reference of an owner to cover also a bailee or lessee.

#### Part 4 of the Bill

23. Clause 30 makes a consequential amendment to section 4(1)(c) of the Freight Containers (Safety)(Arrangements for Authorized Persons) Order (Cap. 506 sub. leg. C) to achieve consistency in the use of words with that in section 5(5) of the Approval Regulation.