

立法會
Legislative Council

LC Paper No. LS55/05-06

**Paper for the House Committee Meeting
on 28 April 2006**

**Legal Service Division Report on
Freight Containers (Safety) (Amendment) Bill 2006**

I. SUMMARY

1. **Object of the Bill** To address the outstanding issues in the light of industry practices so that the Freight Containers (Safety) Ordinance (Cap. 506) (“the Ordinance”) and its subsidiary legislation, which implement in Hong Kong the International Convention for Safe Containers, can be brought into operation.

2. **Comments**
 - (a) The Bill proposes to expand the application of the Ordinance to cover containers in Hong Kong irrespective of their place of manufacture, and to allow applications for approval of containers and approval of examination procedures of containers to be made in respect of containers whether the containers are manufactured or used in Hong Kong or elsewhere.

 - (b) The Director of Marine will cease to perform the function of container approval. The Bill proposes to assign this function solely to authorized persons appointed by the Director.

 - (c) The Bill proposes to require the owner, bailee or lessee of a container to remove the safety approval plate fixed to the container under certain specified conditions. Contravention of this new requirement will be an offence punishable by a fine at level 4 (\$25,000) and imprisonment for one year.

3. **Public Consultation** The local maritime industry has been consulted and expressed support for the proposal.

4. **Consultation with LegCo Panel** The LegCo Panel on Economic Services was consulted on 27 February 2006. The Panel generally supported the proposed amendments.

5. **Conclusion** The Legal Service Division is seeking clarification from the Administration on certain technical issues. Members may defer decision on the Bill pending the Division’s further report.

II. REPORT

Object of the Bill

To amend the Freight Containers (Safety) Ordinance (Cap. 506) (“the Ordinance”) and its subsidiary legislation to address the outstanding issues in the light of the actual practice of the industry so that the Ordinance and its subsidiary legislation, which implement in Hong Kong the International Convention for Safe Containers, can be brought into operation.

LegCo Brief Reference

2. File Ref.: MA 130/26 issued by the Economic, Development and Labour Bureau on 12 April 2006.

Date of First Reading

3. 26 April 2006.

Background

4. The International Convention for Safe Containers 1972 (“the Convention”) was adopted by the International Maritime Organization to standardize the requirements for the testing, inspection and approval of containers, and to prescribe procedures for their examination and maintenance so as to ensure safety in the handling, stacking and transportation of containers. The Convention and its amendments adopted in 1981, 1983 and 1991 are in force internationally, and have been extended to Hong Kong since 30 May 1997.

5. The Ordinance was enacted in May 1997 and its subsidiary legislation made in May 2001 for the purpose of implementing the Convention in Hong Kong. The Ordinance establishes a regime to ensure the structural safety of containers used in Hong Kong. The regime requires all containers in use in Hong Kong to be approved either by the Director of Marine (“the Director”) or persons authorized by him (“authorized persons”) as conforming to the required safety standards, and if so approved, to have fixed to them a safety approval plate in a specified format. Moreover, 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.

6. The Ordinance and its subsidiary legislation have not yet come into operation. Inspection of containers is at present carried out by the Director through administrative means to ensure their structural safety. According to the LegCo Brief, since the enactment of the Ordinance and its subsidiary legislation, there have been changes to trade practices which need to be dealt with in order that the Ordinance and its subsidiary legislation can be brought into operation.

Comments

7. The object of this Bill is to address the outstanding issues in the light of the actual practice of the industry so that the Ordinance and its subsidiary legislation can be brought into operation.

8. The Bill proposes to expand the application of the Ordinance (except for the provisions relating to approval of containers and approval of examination procedures of containers) to cover containers in Hong Kong irrespective of their place of manufacture. The effect of this proposed amendment is that the Director could exercise his regulatory and law enforcement powers against any container in Hong Kong whether it is manufactured in Hong Kong or elsewhere to ensure the safety of containers used in Hong Kong. With regard to approval of containers and approval of examination procedures of containers, the Bill proposes to allow applications for such approval to be made in respect of any container, whether the container is manufactured or used in Hong Kong or elsewhere. According to the LegCo Brief, the proposed expansion of the coverage of approval to containers manufactured outside Hong Kong is necessary to fulfil Hong Kong's international obligation under the Convention.

9. The Bill also proposes to assign the function of approving containers under sections 5 and 6 of the Ordinance solely to authorized persons appointed by the Director. The effect of the proposed amendment is that the Director will cease to perform the function of container approval. According to the LegCo Brief, this will allow the Marine Department to focus on its regulatory and law enforcement functions. Under the Ordinance, the fee for approving containers is prescribed either by the Ordinance or by subsidiary legislation made under the Ordinance. Under the Bill, the fee will no longer be so prescribed, and hence will not be subject to the scrutiny of the Legislative Council. The Administration intends that the fee should be determined by the authorized persons.

10. Under the Ordinance, an application for approval of examination procedures of containers shall contain the prescribed information and shall be accompanied by the prescribed documents. The Bill proposes to change the required information and documents from being prescribed by law to being specified by the Director administratively.

11. Clause 11 of the Bill adds a new section 10A to the Ordinance to require the owner, bailee or lessee of a container to remove the safety approval plate fixed to the container under specified 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. An owner, bailee or lessee of a container who contravenes the new requirement commits an offence and is liable on conviction to a fine at level 4 (\$25,000) and to imprisonment for one year. The proposed level of penalty for the new offence is the same as that for the offence currently provided in the Ordinance, that is, using or permitting the use of a container which does not have a valid safety approval plate, or which is not properly maintained or examined.

12. Other provisions of the Bill relate to updating the structural safety standards and tests in order to align with the amendments to the Convention in 1983 and 1991 relating to the testing of tank containers, making drafting improvements to the Ordinance and making consequential amendments to the subsidiary legislation.

13. If enacted, the Bill will come into operation on a date to be appointed by the Secretary for Economic Development and Labour by notice published in the Gazette.

Public Consultation

14. According to the LegCo Brief, the Administration has 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.

Consultation with LegCo Panel

15. The Panel on Economic Services was consulted at its meeting on 27 February 2006 on the Bill. The Panel generally supported the proposed amendments. In the course of deliberations, a member was concerned whether container truck drivers would be responsible for complying with the new legislative requirement for the removal of the safety approval plate from the containers under certain conditions. The Administration explained that the new requirement was intended to bind the owner, bailee or lessee of the containers only but not container truck drivers. The Panel also reviewed the measures to enhance safety of persons working in container terminals.

Conclusion

16. The Legal Service Division is seeking clarification from the Administration on certain technical issues, including the reason for changing the present arrangement for determining the fee for approving containers and the information required for applications for approval of examination procedures mentioned in paragraphs 9 and 10 above. Members may wish to defer making a decision on the Bill pending a further report from the Division.

Prepared by

FUNG Sau-kuen, Connie
Assistant Legal Adviser
Legislative Council Secretariat
24 April 2006