

For discussion
on 27 February 2006

Legislative Council Panel on Economic Services

Freight Containers (Safety) (Amendment) Bill

Purpose

This paper briefs Members on the proposal to amend the Freight Containers (Safety) Ordinance (Cap. 506) (“the Ordinance”) to enable the implementation of the International Convention for Safe Containers, 1972 (CSC) in Hong Kong.

Background

2. The CSC was adopted by the International Maritime Organization 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, CSC has been adopted by 77 contracting states.

3. The Ordinance and its four pieces of subsidiary legislation were enacted respectively in May 1997 and July 2001 for the purpose of implementing the CSC in Hong Kong. Subject to the resolution of a few outstanding issues, the Ordinance and its subsidiary legislation will come into operation.

4. The 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, who is required to have the container periodically examined.

Legislative Proposals

5. We propose to introduce the Freight Containers (Safety) (Amendment) Bill (“the Bill”) in 2006 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.

6. The Bill mainly covers four broad categories of amendments –

- (a) To expand the application of the Ordinance to cover the approval of containers, and prescription or approval of examination procedure of containers, irrespective of their origin of manufacture.

Currently, approval of containers issued under the Ordinance applies only to containers manufactured in Hong Kong. Under the CSC, however, if an application for approval is put forward to the administration of a contracting state, the administration or its authorized persons would have to approve the containers so long as the containers meet the structural safety requirements and the test standards. While so far there is no demand for approval of containers in Hong Kong, and this may be attributed to the fact that Hong Kong has no domestic container manufacturers, to fulfill our international obligation under CSC, we propose to amend the application of the Ordinance to provide the legal power for the Director of Marine to appoint authorized persons to handle applications for approval of containers irrespective of their origin of manufacture.

- (b) To assign the function of containers approval under sections 5 and 6 of the Ordinance solely to authorized persons appointed by the Director of Marine.

The existing Ordinance provides for the Director of Marine to exercise the function of an approving authority, and also empowers the Director to appoint one or more persons suitably qualified and experienced to be an authorized person to examine and approve containers, either individually or by design type. With the proposed amendment, the Director of Marine will cease to perform the function of container approvals. This is consistent with the existing practice of Marine Department whereby recognized organizations are authorized to do most surveys and functions in relation to ship safety and ship and port

facility security, whereas the Marine Department would focus on regulation and law enforcement functions. Consequently, there is no need for the approval fees to be prescribed by law, since the provision of approval service by an authorized person is a commercial dealing.

Furthermore, as the Director will no longer carry out the function of approving containers, consequential amendments will be made to Freight Container (Safety) (Applications or Approval of Containers) Regulation (Cap. 506A) by deleting the definition of “approving authority”, which originally means the Director of Marine and an authorized person appointed by the Director, and replacing all references to “approving authority” with “authorized person”.

- (c) To spell out the conditions under which the owner of a container would have to remove the safety approval plate from the container.

As mentioned above, the approval of containers is evidenced by the safety approval plate affixed to the containers, and should be recognized by all contracting states to CSC. Besides, the subsequent maintenance of a safety-approved container is the responsibility of the owner. In accordance with the amendments to CSC, we propose to spell out in the Ordinance the requirement for the owner of a container to remove the safety approval plate from the container if the container has been modified in a manner which would render the original approval void, or if it is removed from service without proper maintenance, or in case where the approval has been withdrawn by the authorized person.

To deal with contravention of this requirement, we also propose to prescribe that any person in contravention of this requirement commits an offence and is liable on conviction to a fine of \$25,000 and to imprisonment for one year.

- (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.

In order to ensure the structural safety of containers, the Director of Marine prescribes procedures for the examination of containers under the Ordinance. Application for approval of examination procedures shall be made to the Director of Marine. Currently, the Ordinance requires an application to contain prescribed information and to be accompanied by prescribed documents, but it is silent on the information and document to be prescribed.

Legislative Timetable

7. Subject to Member's support of the proposals set out in paragraph 6 above, the Bill is planned to be introduced into the Legislative Council in April 2006.

Consultation

8. We have consulted the local maritime industry on the proposal to amend the Ordinance and its subsidiary legislation 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.

9. On the specific proposal to appoint authorized persons to approve the containers as set out in paragraph 6(b) above, nine classification societies which are currently authorized to carry out survey and certification for Hong Kong registered ships were consulted in September 2005. Six of them expressed willingness to take on the role of an authorized person to approve container if so appointed.

Advice Sought

10. Members are invited to give their views and support to the proposed Bill.