

立法會
Legislative Council

LC Paper No. LS5/06-07

**Paper for the House Committee Meeting
on 3 November 2006**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 20 October 2006**

Date of tabling in LegCo : 25 October 2006

Amendment to be made by : 22 November 2006 (or 13 December 2006 if extended by resolution)

**PART I MERCHANT SHIPPING (LOCAL VESSELS) - FEES AND
INSURANCE COVER**

Merchant Shipping (Local Vessels) Ordinance (Cap. 548)

Merchant Shipping (Local Vessels) (Fees) Regulation (L.N. 212)

Merchant Shipping (Local Vessels) (Amount of Insurance Cover) Notice (L.N. 213)

Background

The Merchant Shipping (Local Vessels) Ordinance (Cap. 548) (“the Principal Ordinance”) was enacted in July 1999 to consolidate the provisions previously set out in different ordinances into one piece of legislation dedicated for local vessels but has not come into operation. The implementation of the Principal Ordinance entails the introduction of 11 pieces of subsidiary legislation, five of which were made in 2001 and 2004. The Merchant Shipping (Local Vessels and Miscellaneous Amendments) Ordinance 2005 (24 of 2005) (“the Amendment Ordinance”) was enacted last year to amend the Principal Ordinance. Four further sets of subsidiary legislation tabled on 11 October 2006 at the Legislative Council have been made to prepare for the implementation of the Principal Ordinance as amended by the Amendment Ordinance.

Merchant Shipping (Local Vessels) (Fees) Regulation

2. The Merchant Shipping (Local Vessels) (Fees) Regulation (“the Fees Regulation”) is made by the Secretary for Financial Services and the Treasury (“the Secretary”) under section 88 of the Principal Ordinance to:

- (a) provide for the fees to be paid in respect of certain services and matters under the Principal Ordinance and its subsidiary legislation and to simplify the fee structure applicable to local vessels as provided under the Merchant Shipping (Fees) Regulations (Cap. 281 sub. leg. F) and the Shipping and Port Control (Ferry Terminals) Regulations (Cap. 313 sub. leg. H) (“the existing Regulations”). The provisions of the existing Regulations in respect of local vessels will cease to have effect after the coming into force of the Fees Regulation;
- (b) introduce a multiple entry permit scheme for river trade vessels and reduce licence fees of local vessels; and
- (c) provide for the circumstances under which fees payable may be waived.

3. Members may refer to the LegCo Brief issued by Economic Development and Labour Bureau dated 18 October 2006 (Ref: MA70/15) (“the 1st LegCo Brief”) for background information.

4. According to the 1st LegCo Brief, the Administration has consulted the Provisional Local Vessel Advisory Committee (“the Advisory Committee”) and its relevant sub-committees/working groups, which comprise a wide cross-section of representatives from the local shipping industry, and secured their support.

5. The Economic Services Panel (“the Panel”) was briefed on the legislative proposals relating to the Fees Regulation at the meeting on 27 January 2003. The Panel supported the Fees Regulation. The Panel also discussed measures to enhance the competitiveness of the Hong Kong port and the maritime industry at the meeting on 25 July 2005. Members expressed support for the measures which included streamlining the application procedures for river trade vessels (“RTV”) to enter Hong Kong waters and reduce the permit cost by introducing a multiple entry permit.

6. The Fees Regulation shall come into operation on a day to be appointed by the Secretary by notice published in the Gazette.

Merchant Shipping (Local Vessels) (Amount of Insurance Cover) Notice

7. Section 23D(3)(c) of the Principal Ordinance provides that the policy of insurance in relation to the use of a local vessel is not required to cover any liability in respect of any one accident or series of accidents arising out of the same event exceeding such amount as specified by the Director of Marine (“the Director”).

8. The Merchant Shipping (Local Vessels) (Compulsory Third Party Risks Insurance) Regulation (L.N. 195 of 2006) (“the Insurance Regulation”) is made under the Principal Ordinance to, inter alia, empower the Director to specify the amount of insurance for different classes, types or descriptions of local vessels and for different circumstances, and to publish them by notice in the Gazette.

9. This Notice is made by the Director under section 21 of the Insurance Regulation to specify the minimum amount of insurance cover for different local vessels in two phases to ensure smooth operation:

- (a) For phase one, i.e. the first 6 months from the commencement of the Notice, the amount of insurance cover for the vessels concerned, including pleasure boats, launches and ferry vessels will be the same as those currently prescribed under the existing Merchant Shipping (Compulsory Third Party Risks Insurance) Regulations, (Cap. 281 sub. leg. K) (“the existing Regulations”). The existing Regulations will be repealed upon the commencement of the Notice; and
- (b) The amount of insurance cover will be adjusted and extended to all local vessels upon the beginning of the second phase, i.e. 6 months after the commencement of the Notice.

10. Members may refer to the LegCo Brief issued by Marine Department dated 18 October 2006 (Ref: PA/S 936/31/19/1) (“the 2nd LegCo Brief”) for background information. Summary of the amounts of various insurance cover for major types of local vessels under the two phases are set out in the 2nd LegCo Brief.

11. According to the 2nd LegCo Brief, the Administration has consulted the Advisory Committee and secured their support.

12. The Panel discussed the Insurance Regulation at its meetings on 27 January and 24 February 2003 and 7 December 2004. Members expressed concern about the proposed minimum insurance covers for local vessels, in particular for pleasure vessels, and the impact on premium. To address members’ concern, the Administration subsequently adjusted the minimum liability covers downward (Ref: LC Paper No. CB(1)928/02-03(03)). The Panel supported the revised liability covers. On the applicability of the compulsory third party risks insurance requirement to RTV, concern was raised on enforcing the requirement by means of administrative measures. The Administration was urged to strengthen control over RTV and introduce measures to facilitate local vessel owners to claim damages from RTV owners. According to the Administration, the requirement for third party insurance for RTV would be set out in the Merchant Shipping (Local Vessels) (General) Regulation. In response to members’ enquiry, the Administration has provided supplementary information on the scope of third party risks insurance coverage in respect of cargo handling operation (Ref: LC Paper No. CB(1)1146/02-03(01)).

13. The Notice shall come into operation on the day appointed for the commencement of section 9 (except in so far as it relates to the new section 23B(1)(c)) of the Amendment Ordinance.

PART II DR SUN YAT-SEN MUSEUM

Public Health and Municipal Services Ordinance (Cap. 132)

Designation of Museum (Dr Sun Yat-sen Museum) Order (L.N. 214)

14. The Designation of Museum (Dr Sun Yat-sen Museum) Order (“the Order”) is made under section 105G of the Public Health and Municipal Services Ordinance (Cap. 132) (“the Ordinance”). The Order designates the building and the courtyard located at No. 7 Castle Road, Hong Kong and known as the Dr Sun Yat-sen Museum (“the Museum”) as a museum for the purposes of the Ordinance. The Schedule to the Designation of Museums Order (Cap. 132 sub. leg. P) is amended by adding the Museum accordingly.

15. At its meeting on 4 February 2005, the Panel on Home Affairs (“the Panel”) was consulted on the proposed establishment and preparation of the Museum at Kom Tong Hall. According to the Administration, there had been a long cherished desire to provide for a Dr Sun Yat-sen Museum to commemorate his life and activities in Hong Kong. Kom Tong Hall was found most suitable for the proposed Museum as it was centrally located in the Central and Western District where Dr Sun had studied and organised his revolutionary activities. Members supported the Administration’s proposal in principle.

16. Members may refer to the minutes of the Panel meeting on 4 February 2005 (Ref: LC Paper No. CB(2)1081/04-05) for further information.

17. The Order shall come into operation on 1 December 2006.

PART III COMMENCEMENT NOTICES

Carriage by Air (Amendment) Ordinance 2005 (22 of 2005)

Carriage by Air (Amendment) Ordinance 2005 (Commencement) Notice (L.N. 215)

18. The Carriage by Air (Amendment) Ordinance 2005 (22 of 2005) (“the Amendment Ordinance”) amends the Carriage by Air Ordinance (Cap. 500) (“the Principal Ordinance”) to apply the Convention for the Unification of Certain Rules for International Carriage by Air signed at Montreal on 28 May 1999 (the “Montreal Convention”) to bring Hong Kong’s aviation regulatory framework governing airlines’ liabilities towards passengers and shippers in line with international standards.

19. Members may refer to LegCo Brief issued by Economic Development and Labour Bureau on 8 June 2005 (Ref: EDB CR 6/951/2001) and the Legal Service Division report on the Amendment Ordinance (Ref: LC Paper No. LS84/04-05) for background information.

20. By this Notice, the Secretary for Economic Development and Labour has appointed 15 December 2006 as the day on which the Amendment Ordinance shall come into operation.

21. The Economic Services Panel (“the Panel”) has not been specifically consulted on the Notice. The Panel was consulted on the legislative proposal to amend the Principal Ordinance at the meeting on 24 January 2005. Members indicated support for the proposal in general.

Freight Containers (Safety) Ordinance (Cap. 506)

Freight Containers (Safety) Ordinance (Commencement) Notice (L.N. 216)

Freight Containers (Safety) (Applications for Approval of Containers) Regulation (Commencement) Notice (L.N. 217)

Freight Containers (Safety) (Fees) Regulation (Commencement) Notice (L.N. 218)

Freight Containers (Safety) (Arrangements for Authorized Persons) Order (Commencement) Notice (L.N. 219)

Freight Containers (Safety) (Examination Procedure) Order (Commencement) Notice (L.N. 220)

Freight Containers (Safety) (Amendment) Ordinance 2006 (Commencement) Notice (L.N. 221)

Background

22. 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 have been extended to Hong Kong since 30 May 1997.

23. The Freight Containers (Safety) Ordinance (Cap. 506) (“the Principal Ordinance”) was enacted in May 1997 for the purpose of implementing the Convention in Hong Kong. The Principal 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 as conforming to the required safety standards, and if so approved, to have fixed to them a safety approval plate in a specified format. The owner, bailee or lessee of a container has 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.

24. The Freight Containers (Safety) (Applications for Approval of Containers) Regulation (Cap. 506 sub. leg. A), the Freight Containers (Safety) (Fees) Regulation (Cap. 506 sub. leg. B), the Freight Containers (Safety) (Arrangements for

Authorized Persons) Order (Cap. 506 sub. leg. C) and the Freight Containers (Safety) (Examination Procedure) Order (Cap. 506 sub. leg. D) (collectively “the Subsidiary Legislation”) are subsidiary legislation made for the implementation of the Convention and the container safety regime.

25. The Principal Ordinance and the Subsidiary Legislation have not come into operation. Inspection of containers is at present carried out by the Director of Marine through administrative means to ensure their structural safety.

26. The Freight Containers (Safety) (Amendment) Ordinance 2006 (14 of 2006) (“the Amendment Ordinance”) was passed on 14 June 2006 to address the changes to trade practices since the enactment of the Principal Ordinance and the Subsidiary Legislation.

27. Members may refer to the Bills Committee report on the Principal Ordinance (Ref: LC Paper No. CB(1)1176/96-97), the Legal Service Division reports on the Subsidiary Legislation (Ref: LC Paper No. LS111/00-01, LS129/00-01 and LS141/00-01) and the Amendment Ordinance (Ref: LS55/05-06 and LS74/05-06) for further information.

28. By L.N. 216 to L.N. 221 of 2006, the Secretary for Economic Development and Labour appoints 10 November 2006 as the day on which Principal Ordinance, the Subsidiary Legislation and the Amendment Ordinance shall come into operation.

29. The Economic Services Panel has not been specifically consulted on the Notices. At the meeting on 27 February 2006, the Panel was briefed on the proposal to amend the Principal Ordinance to enable the implementation of the Convention in Hong Kong. Members generally supported the proposed amendments.

Concluding remarks

30. No difficulties relating to the legal and drafting aspects of L.N. 212 to L.N. 221 have been identified.

Prepared by

LAI Shun-wo, Monna
Assistant Legal Adviser
Legislative Council Secretariat
27 October 2006