

立法會
Legislative Council

LC Paper No. CB(1)2640/08-09
(These minutes have been seen
by the Administration)

Ref : CB1/BC/8/08

**Bills Committee on
Bunker Oil Pollution (Liability and Compensation) Bill**

**Minutes of the second meeting on
Wednesday, 9 September 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

Members present : Hon Fred LI Wah-ming, SBS, JP (Chairman)
Hon WONG Yung-kan, SBS, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon CHEUNG Hok-ming, GBS, JP
Hon Cyd HO Sau-lan
Hon Tanya CHAN

Public Officers attending : Agenda Item II

Miss Janice TSE, JP
Deputy Secretary for Transport and Housing (Transport)

Miss Emmy WONG
Principal Assistant Secretary for Transport and Housing
(Transport)

Mr Patrick CHUN, JP
Assistant Director, Multi-lateral Policy
Marine Department

Mr Jimmy LEUNG
Acting Chief, Technical Policy/Multi-lateral Policy
Marine Department

Miss Shirley WONG
Senior Government Counsel
Department of Justice

Ms Angie LI
Government Counsel
Department of Justice

Attendance by invitation : Agenda Item II

The Marine Excursion Association Limited

Mr Albert CHEUNG Yau-kwong
President

The Hong Kong Shipowners Association Limited

Mr Edward LEE Kwok-leung
Member of the Executive Committee

Unique Shipping (H.K.) Limited

Mr Anil ARORA
Senior Manager

Clerk in attendance : Ms Debbie YAU
Chief Council Secretary (1)6

Staff in attendance : Ms Kitty CHENG
Assistant Legal Adviser 5

Ms Angel SHEK
Senior Council Secretary (1)1

Miss Constance MAN
Senior Council Secretary (1)8

Ms Michelle NIEN
Legislative Assistant (1)9

Action

- I Confirmation of minutes**
(LC Paper No. CB(1)2396/08-09 - Minutes of meeting held on 15 July 2009)

The minutes of the meeting held on 15 July 2009 were confirmed.

II Meeting with the Administration and deputations

Meeting with the Administration

- (LC Paper No. CB(3)692/08-09 - The Bill
- File Ref: MA CR L/M 4/2008 - Legislative Council Brief issued by the Transport and Housing Bureau
- LC Paper No. LS93/08-09 - Legal Service Division Report
- LC Paper No. CB(1)2539/08-09(01) - Paper on Bunker Oil Pollution (Liability and Compensation) Bill prepared by the Legislative Council Secretariat (background brief)
- LC Paper No. CB(1)2539/08-09(02) - Assistant Legal Adviser's letter dated 2 July 2009 to the Administration
- LC Paper No. CB(1)2539/08-09(03) - Administration's response to LC Paper No. CB(1)2539/08-09(02)
- LC Paper No. CB(1)2567/08-09(01) - Hon CHEUNG Hok-ming's letter dated 7 September 2009 (Chinese version only)

Meeting with deputations and the Administration

1. The Marine Excursion Association Limited
 2. The Hong Kong Shipowners Association Limited
(LC Paper No. CB(1)2539/08-09(04) – submission)
 3. Unique Shipping (H.K.) Limited
2. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions required to be taken by the Administration

3. The Administration was requested to consider specifying in the long title that, inter alia, the Bill was to give effect to the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (the Bunker Oil Convention) with reference to other bills or ordinances.
4. Regarding "Liability for pollution damage" under Part 2 of the Bill, the Bills Committee requested the Administration to:

- (a) clarify whether there would be an apportionment of liability:
 - (i) among shipowners if two or more ships were involved in the incident causing pollution damage, where only one shipowner was at fault (proposed section 6);
 - (ii) if the pollution damage was due partly to a shipowner's fault and partly to conditions beyond his control such as irresistible natural phenomenon (proposed section 7);
- (b) clarify the reference of "a/the person" under proposed section 6(3); and
- (c) clarify whether the exemption from liability under proposed section 5 was absolute or partial (proposed section 7).

Date of next meeting

5. The Bills Committee agreed to hold the next meeting on Monday, 28 September 2009, at 8:30 am.

III Any other business

6. There being no other business, the meeting ended at 10:42 am.

Council Business Division 1
Legislative Council Secretariat
25 September 2009

**Proceedings of the second meeting of
Bills Committee on Bunker Oil Pollution (Liability and Compensation) Bill
on Wednesday, 9 September 2009, at 8:30 am
in Conference Room A of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000230 – 000324	Chairman	The Chairman's introductory remarks	
000325 – 000749	Chairman Administration	<p><u>Meeting with the Administration</u></p> <p>Briefing by the Administration on the Bill which was to implement the International Convention on Liability for Bunker Oil Pollution Damage, 2001 (the Bunker Oil Convention) (File Ref: MA CR L/M 4/2008)</p>	
000750 – 001209	Chairman Mr CHEUNG Hok-ming Administration	<p>Mr CHEUNG Hok-ming's enquiry (paragraph 4 of his letter dated 7 September 2009 (CB(1)2567/08-09(01))), whether the proposed regulation only applied to ships with a gross tonnage greater than 1 000</p> <p>The Administration's clarification that the proposed compensation regime and limitation of liability applied to all non-tankers irrespective of their size, but compulsory insurance or other security was required for ships with a gross tonnage greater than 1 000 except for local vessels operating exclusively within the river trade limits</p>	
001210 – 001819	Chairman Mr WONG Yung-kan Administration	<p>Mr WONG Yung-kan's concern whether the proposed compulsory insurance requirement would overlap with other insurance plans acquired by the shipowners</p> <p>The Administration's explanation that the existing vessel insurance normally covered compensation for death or injury due to marine accidents whereas the proposed compulsory insurance was specifically targeted at pollution damage caused by discharge or escape of bunker oil. The compulsory insurance requirement would not be applicable to ships having a gross tonnage of 1 000 or below nor to local vessels operating exclusively within the river trade limits</p> <p>Mr WONG Yung-kan's further enquiry that owners of ships of 1 000 tonnage or below might be unable to pay for the compensation if they were not required to take out the compulsory insurance in question</p> <p>The Administration's explanation that the compulsory insurance requirement would not be applicable to local vessels and ships having a gross tonnage of 1 000 or below because:</p> <p>(a) compulsory insurance was not a mandatory</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>requirement for these vessels under the Bunker Oil Convention but they could still acquire insurance against oil spillage at their own discretion;</p> <p>(b) the fuel type used by local vessels was usually cleaner with less environmental impact;</p> <p>(c) the record of bunker oil pollution incidents relating to local vessels was minimal and the extent of pollution damages resulted was relatively minor; and</p> <p>(d) the compulsory insurance requirement would impact on the viability of local vessels</p>	
001820 – 003219	Chairman Ms Audrey EU Administration	<p>Ms Audrey EU's enquiry about –</p> <p>(a) the time difference between the introduction of the Bill and the date on which the Convention was adopted by the International Maritime Organization (IMO), i.e. 2001;</p> <p>(b) the reference on the particular provisions of the Bunker Oil Convention of which the clauses of the Bill sought to implement;</p> <p>(c) the deadline for implementing the legislation to extend the Bunker Oil Convention to Hong Kong; and</p> <p>(d) clarification on clause 5(3)(a) and (b) with regard to the scope and justification of the circumstances under which a shipowner would not be held liable to pollution damage attributable to the impairment of the environment</p> <p>The Administration's response to Ms EU's enquiry –</p> <p>(a) the Bunker Oil Convention came into force on 21 November 2008, i.e. one year after the number of Member States participating in the Convention had reached the prescribed number on 21 November 2007. Hence, the Administration commenced preparation for the drafting of the legislative proposals in late 2007 and conducted public consultation in 2008; and</p> <p>(b) the table appended to the Administration's letter (CB(1)2539/08-09(03)) set out the information on how the Bill implemented the Bunker Oil Convention. The Bill sought to extend all the requirements of the Convention, except where flexibility for variation was allowed;</p>	

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		<p>(c) while there was no deadline for the extension of the Bunker Oil Convention to Hong Kong, early implementation would provide an effective compensation regime for pollution damage caused by spills of bunker oil from non-tankers on par with that of most jurisdictions. This would reinforce Hong Kong's status as an international maritime centre. After implementation of the legislation, shipowners of Hong Kong-registered ships would no longer need to seek assistance from other member states of the Convention for the issuance of the insurance certificates satisfying the requirements under the Convention; and</p> <p>(d) the shipowner would not be liable for any damage attributable to the impairment of the environment unless the damage was loss of profits from the impairment of the environment or cost of any reasonable measures of reinstatement of the environment actually taken or to be taken. The wordings of this clause followed that in the Bunker Oil Convention, which sought to give a more concrete and quantifiable interpretation of "damage" for the purpose of limiting liability and determining compensation. Disputes between the shipowners and claimants over the "damage" caused by oil spillage, if any, would be judged by the court on individual merits</p>	
003220 – 003759	Chairman Administration Mr CHEUNG Hok-ming	<p>Mr CHEUNG Hok-ming's concern that –</p> <p>(a) public officer in the officer's capacity as such would not be liable to be prosecuted for an offence against the proposed ordinance (clause 3(4)); and</p> <p>(b) whether the Government would bear the cost of reinstating the environment if the shipowner was not liable in respect of any damage resulting from an incident (clause 7)</p> <p>The Administration's response –</p> <p>(a) exemption of liability granted to a public officer in the officer's capacity was in line with the practice in other local legislation and the standing policy with regard to the liability of a public officer, and only applied to circumstances involving criminal offence; and</p> <p>(b) each case would be determined on individual merits, including whether any party other than the shipowner should be liable for the damage concerned. If the pollution damage was resulted from inevitable natural phenomenon or other</p>	

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		<p>irresistible circumstances such that no person was held liable for the damage, generally speaking, it was envisaged that the Government would take measures to reinstate the environment and bear the cost concerned</p>	
003800 – 004719	Chairman Ms Miriam LAU Administration	<p>Ms Miriam LAU's concern how the public could make cross-reference to the articles of the Bunker Oil Convention when consulting the Ordinance, if enacted, as the full text of the Convention would not appear in the legislation</p> <p>The Administration's explanation –</p> <p>(a) a balance had to be struck between enhancing the clarity of the Bill while ensuring interface with existing legislation concerned. Wordings used in the related articles of the Convention had been adopted as far as possible in the Bill, unless the original text warranted local adaptation;</p> <p>(b) direct reference approach would save the need from amending the legislation from time to time when the Convention was amended, especially in respect of minor and technical amendments; and</p> <p>(c) shipowners and the general public could access the Convention document on the website</p>	
004720 – 004925	Chairman Administration	<p>The Administration's response to Mr CHEUNG Hok-ming's enquiry about the power of the Director of Marine to grant exemption for any person or ship from the application of clause 13 or 14 in respect of compulsory insurance or keeping insurance certificates or specified certificates on ships (paragraph 20 of CB(1) 2567/08-09(01)) that such exemption might be granted in exceptional circumstances, say during inclement weather whereby ships from non-party states of the Bunker Oil Convention without the insurance certificate or specified certificates had to seek shelter within the waters of Hong Kong for safety reasons</p>	
004926 – 005054	Chairman	<p>Confirmation of minutes of meeting held on 15 July 2009 (CB(1)2396/08-09)</p>	
005055 – 010759	Chairman Ms Audrey EU Ms Cyd HO Ms Miriam LAU Administration	<p><u>Clause-by-clause examination of the Bill</u> (CB(3)692/08-09)</p> <p><u>Long title</u></p> <p>Ms Audrey EU's enquiry why it was not specified in the long title that the Bill was to give effect to the Bunker Oil Convention</p>	

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		<p>The Administration's response –</p> <p>(a) the long title in question aimed to set out the purpose of the Bill on a broader sense, as the legislation might in future be extended to cover international agreements other than Bunker Oil Convention;</p> <p>(b) similar practice was adopted in drafting other legislation (e.g. Merchant Shipping (Limitation of Shipowners Liability) Ordinance (Cap. 434));</p> <p>(c) as some provisions in the Bill, such as clause 22 regarding limitation on amount of judgment enforceable in Hong Kong, also applied to non-party states of the Bunker Oil Convention, it might not be appropriate to make reference to the Bunker Oil Convention in the long title; and</p> <p>(d) it was already set out in paragraph 1 of the Explanatory Memorandum to the Bill that the main purpose of the Bill was to give effect to the Bunker Oil Convention</p> <p>Ms Miriam LAU's comment that as the Explanatory Memorandum to the Bill would not appear in the future Ordinance, if enacted, the public would not be able to make reference conveniently</p> <p>Ms Audrey EU's consideration that the inclusion of Bunker Oil Convention in the long title did not necessarily mean to exclude other conventions or practices</p> <p>Ms Cyd HO's agreement that the Administration should specify in the long title the Bill was to give effect to the Bunker Oil Convention to show that Hong Kong had fulfilled its international obligations</p> <p>Ms Miriam LAU's consideration that with the use of appropriate wordings, the Bunker Oil Convention could be specified in the long title while retaining flexibility for the proposed Ordinance to cover other international conventions in future</p>	
010800 – 011344	Chairman The Hong Kong Shipowners Association Limited (HKSAL)	<p><u>Meeting with deputations</u></p> <p>Presentation of views (CB(1)2539/08-09(04))</p>	
011345 – 011716	Chairman Unique Shipping (H.K.) Limited (USL)	<p>USL's concern that Hong Kong had lagged behind in implementing the Bunker Oil Convention as 44 IMO Member States had already ratified its provisions. This had brought about disadvantages to the owners of</p>	

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		ocean-going vessels registered in Hong Kong. Direct reference approach should be used to enable the early adoption of the Bill or other international conventions adopted by IMO	
011717 – 012119	Chairman The Marine Excursion Association Limited (MEA) Ms Miriam LAU	MEA's support for the implementation of the Bunker Oil Convention. Its concerns about the scope of liability, the availability or otherwise of a grace period, the need to monitor the level of premium and the parties liable to pollution damage caused by accidents Ms Miriam LAU's clarification that the compulsory insurance requirement proposed in the Bill only applied to ships having a gross tonnage of more than 1 000	
012120 – 012444	Chairman Ms Cyd HO HKSAL Administration	In reply to Ms Cyd HO, HKSAL's advice that the insurance in question could not be provided by local insurers. The IMO Member States which had participated in the Bunker Oil Convention would issue the insurance certificate only to those ships which had acquired shipping insurance from one of the 13 Protection and Indemnity Clubs (P and I Clubs), which were formed by groups of shipowners and operated on a mutual basis <i>(Post-meeting note: The Administration supplemented that some administrations also accepted insurance issued by insurers other than the 13 P and I Clubs)</i>	
012445 – 012651	Chairman Administration MEA	The Administration's clarification that the shipowner would be exempted from liability if the incident was caused by an irresistible natural phenomenon	
012652 – 013014	Chairman Administration Ms Cyd HO Ms Miriam LAU Assistant Legal Adviser (ALA)	<u>Continuation of clause-by-clause examination of the Bill</u> <u>Clause 1 – short title and commencement</u> Members did not raise any query <u>Clause 2 – interpretation</u> Addressing Mr CHEUNG Hok-ming's enquiry about the definition of "place" (paragraph 2 of CB(1)2567/08-09(01)), the Administration's response that "place" included a state. Therefore "the territorial sea of a place" could be construed as "the territorial sea of a state"	
013015 – 013312	Chairman Administration Ms Miriam LAU	Ms Miriam LAU's enquiry about the selection and scope of terms under the clause since the terms under Article 1 – Definitions in the Bunker Oil Convention were less and simpler	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration's advice that some definitions under clause 2 appeared in other articles of the Convention. The Bill also included definitions for terms used in existing legislation, such as "enforcement officer", "gross tonnage" etc</p>	
013313 – 013833	<p>Chairman Ms Cyd HO Administration</p>	<p>Ms Cyd HO's query about the liability if oil spilt from a ship in the international waters (i.e. more than 200 nautical miles from the baseline of Mainland waters) had caused pollution damage in Hong Kong waters</p> <p>The Administration's advice that while events occurred in the international waters could be governed by other relevant international instruments including the United Nations on the Law of the Sea, pollution damage caused in Hong Kong waters arising from an event occurred in the international waters would be covered by the Bunker Oil Convention and hence would fall within the scope of the Bill</p>	
013834 – 013927	<p>Chairman Administration</p>	<p>In response to Mr CHEUNG Hok-ming's concern about the ambiguity of "Government" in the Bill as it could refer to the government of a country or a place as in clause 3(1), or the Government of Hong Kong Special Administrative Region (HKSAR) as in clause 3(4) (paragraph 5 of CB(1)2567/08-09(01)), the Administration would move amendments to the Chinese text of the Bill specifying HKSAR Government as appropriate</p>	
013928– 014449	<p>Chairman Ms Cyd HO ALA</p>	<p>ALA's reference to the table enclosed under CB(1)2539/08-09(03) which had set out the articles in the Bunker Oil Convention that the relevant clause of the Bill sought to implement</p> <p>Ms Cyd HO's observation about the discrepancy in the use of a Chinese term between the Bill ("逸漏" under clause 2) and the Bunker Oil Convention ("逸出" under Article 1(9)(a))</p> <p>The Administration's response that the use of "逸漏" was modeled on Merchant Shipping (Liability and Compensation for Oil Pollution) Ordinance (Cap. 414) to achieve consistency</p>	
014450 – 020623	<p>Chairman Administration</p>	<p><u>Clause 3 – Application of Ordinance</u></p> <p>Members did not raise any query</p>	
014540 – 014605	<p>Chairman Administration</p>	<p><u>Part 2 – Liability for Pollution Damage</u> <u>Clause 4 – Application of this Part</u></p> <p>Members did not raise any query</p>	

Time marker	Speaker	Subject(s)	Action required
014606 – 020644	Chairman Administration Ms Audrey EU ALA Ms Miriam LAU	<p><u>Clause 5 – Liability of shipowners of ships for pollution damage</u></p> <p>Ms Audrey EU's concern why the shipowner referred in clause 5(2)(b) was also liable for the damage caused</p> <p>Ms Miriam LAU's understanding that it referred to shipowner's liability for pollution damage in another Bunker Oil Convention place</p> <p><u>Clause 6 – Liability of shipowners of ships – joint and several</u></p> <p><u>Clause 7 – Exemptions from liability under section 5</u></p> <p>Ms Audrey EU's concern</p> <p>(a) whether there would be an apportionment of liability</p> <p>(i) among shipowners if two or more ships were involved in the incident causing pollution damage, where only one shipowner was at fault;</p> <p>(ii) if the pollution damage was due partly to a shipowner's fault and partly to conditions beyond his control such as irresistible natural phenomenon</p> <p>(b) about the reference of "a/the person" under clause 6(3); and</p> <p>(c) about the clarity of clause 6(3)</p> <p>Ms Miriam LAU's concern whether the exemption from liability under clause 5 was absolute or partial as the shipowner might have only contributory negligence</p> <p>Ms Audrey EU's enquiry about the compensation arrangements between different insurance companies if more than one ship was involved in the incident leading to the pollution damage</p> <p>The Administration's advice that the Bill sought to limit the liability of shipowners. Pursuant to clause 6(3), section 21 of the Law Reform (Consolidation) Ordinance (Cap. 23) in relation to apportionment of liability in case of contributory negligence applied. The arrangements would facilitate acquisition of insurance and seeking of compensation in a practicable and reasonable manner</p> <p>ALA's suggestion that to facilitate members' consideration, the Administration should provide</p>	<p>The Administration to provide information as required in paragraph 4(a) (i) and (ii) of the minutes</p> <p>The Administration to provide information as required in paragraph 4(b) and (c) of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		written clarification to members' concerns for further deliberation at the next meeting	
020645 – 021307	Chairman Ms Miriam LAU	Date of next meeting	

Council Business Division 1
Legislative Council Secretariat
25 September 2009