

立法會
Legislative Council

LC Paper No. CB(1)207/09-10
(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 third meeting on
Monday, 28 September 2009, at 8:30 am
in Conference Room B of the Legislative Council Building**

Members present : Hon Fred LI Wah-ming, SBS, JP (Chairman)
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

Member absent : Hon WONG Yung-kan, SBS, JP

**Public Officers
attending** : Agenda Item II

Miss Emmy WONG
Acting Deputy 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

Ms Frances HUI
Senior Government Counsel
Department of Justice

Miss Shirley WONG
Senior Government Counsel
Department of Justice

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

Action

I Confirmation of minutes

(LC Paper No. CB(1)2640/08-09 -- Minutes of meeting held on
9 September 2009)

The minutes of the meeting held on 9 September 2009 were confirmed.

II Meeting with the Administration

Clause-by-clause examination of the Bill

(LC Paper No. CB(1)2647/08-09(01) -- Administration's paper on a
proposed fee regulation made
under the Bunker Oil Pollution
(Liability and Compensation) Bill

LC Paper No. CB(1)2631/08-09(01) -- List of follow-up actions arising
from the discussion at the meeting
on 9 September 2009 prepared by
the Legislative Council Secretariat

LC Paper No. CB(1)2631/08-09(02) -- Administration's response to LC
Paper No. CB(1)2631/08-09(01)

LC Paper No. CB(1)2567/08-09(01) -- Hon CHEUNG Hok-ming's letter
dated 7 September 2009 (Chinese
version only)

LC Paper No. CB(1)2631/08-09(03) -- Administration's response to LC
Paper No. CB(1)2567/08-09(01)

LC Paper No. CB(1)2631/08-09(04) -- Marked-up copy of the ordinances with consequential and related amendments pursuant to the Bunker Oil Pollution (Liability and Compensation) Bill prepared by the Legal Service Division)

2. As the Chairman indicated that he would need to attend the early part of the special meeting of the Panel on Housing scheduled to start at 8:30 am in the same morning, the Bills Committee elected Ms Miriam LAU to chair the meeting during the temporary absence of the Chairman.

3. The Bills Committee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions required to be taken by the Administration

4. In view of members' concern about the power of the Director of Marine (the Director) to grant exemptions under clause 23 to any person or ship from the application of any provision of clause 13 or 14, the Bills Committee requested the Administration to provide information on the mechanism to ensure that such exemption would be granted only if necessary and under stringent considerations and practices, including that only the Director (or the Acting Director) could give the exemption.

5. Regarding the service of notice under clause 30, the Administration was requested to include reference to the application of the Electronic Transactions Ordinance (Cap. 553) on the way a notice or other document required or permitted to be served or sent under the Bill was to be regarded as having been duly served or sent.

6. On the proposed regulation on fees to be made pursuant to clause 33, the Bills Committee requested the Administration to consider lowering the proposed level of application fee of HK\$535 for the insurance certificate to be issued by the Director. The Bills Committee also requested the Administration to provide a paper to the Panel on Economic Development on the application fees payable in other jurisdictions when it consulted Panel members.

7. The Administration was requested to clarify how "the owner" of a vessel could be traced and identified if no person was registered as the owner of the vessel (clause 39).

Date of next meeting

8. The Bills Committee agreed to hold the next meeting on Monday, 5 October 2009 at 10:45 am. Subject to completion of examination of the Administration's proposed Committee Stage Amendments and other outstanding issues of the Bill at the next meeting, the Bills Committee would report to the

Action

House Committee on 23 October 2009. The Bills Committee noted that the Administration intended to resume the Second Reading debate on the Bill at the Council meeting on 11 November 2009.

III Any other business

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

Council Business Division 1
Legislative Council Secretariat
30 October 2009

**Proceedings of the third meeting of
the Bills Committee on Bunker Oil Pollution (Liability and Compensation) Bill
on Monday, 28 September 2009, at 8:30 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000200 – 000300	Chairman Ms Audrey EU Miss Tanya CHAN Ms Miriam LAU	Ms Miriam LAU was elected to chair the meeting during the temporary absence of the Chairman	
000301 – 000338	Chair	Confirmation of minutes of meeting held on 9 September 2009 (CB(1)2640/08-09)	
000339 – 001737	Chair Administration Ms Audrey EU	<p>Briefing by the Administration on its response to concerns raised at the meeting on 9 September 2009 (CB(1)2631/08-09(02))</p> <p><u>Clauses 5 and 6 – Liability of shipowners</u></p> <p>Ms Audrey EU's query whether a shipowner whose ship caused pollution damage after being collided by another ship would be wholly liable despite that he was not at fault</p> <p>The Administration's explanation that pursuant to clause 5, which sought to implement Articles 1(9) and 3(1) of the International Convention on Civil Liability for Bunker Oil Pollution Damage, 2001 (Bunker Oil Convention), the shipowner of the ship which spilt the oil and caused oil damage in Hong Kong as a result of the incident was liable for the damage. However, by virtue of clause 6(3), section 21 of the Law Amendment and Reform (Consolidation) Ordinance (Cap. 23) on apportionment of liability in case of contributory negligence would apply and this shipowner might recover contribution under section 3 of the Civil Liability (Contribution) Ordinance (Cap. 377) from the other shipowner who actually caused the incident (e.g by causing the collision as in Ms Audrey EU's example)</p> <p>The Administration's confirmation of the Chair's understanding that if oil was discharged from the ship making the collision instead, the owner of the ship being collided would not be liable for the pollution damage</p>	
001738 – 003329	Chair Ms Audrey EU Administration Ms Cyd HO	<p><u>Clause 7 – Exemptions from liability under clause 5</u></p> <p>Ms Audrey EU's concern while the shipowner of a ship was not liable under clause 5 in respect of any damage resulting from an incident if he proved that the incident was "due wholly to" the situations depicted under clause 7(b) to (d), the specification of "due wholly to" was not stated in clause 7(a), and as such, she queried whether the shipowner would be liable if the pollution damage was due partly to an irresistible natural phenomenon and partly to his fault such as poor maintenance of the ship</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration's clarification that clause 7(a) was modelled on Article 3.3(a) of the Bunker Oil Convention. If a shipowner of a ship was able to prove that the damage was resulted from, inter alia, an exceptional, inevitable and irresistible natural phenomenon, the shipowner would not be liable for such damage. Unlike the circumstances under clause 7(b) to (d) that the shipowners, in seeking exemption from liability, had to prove that the incident was due wholly to the situations depicted in clause 7(b) to (d), the shipowner, in accordance with clause 7(a), would only need to prove that the incident was resulted from an act of war, hostilities, civil war, insurrection or an exceptional, inevitable and irresistible natural phenomenon in order to be granted exemption. The Administration's confirmation of the Chair's understanding that the exemption granted under clause 7(a) was absolute</p> <p>In response to Ms Cyd HO's enquiry about the interpretation of "an irresistible natural phenomenon", the Administration's explanation that "an irresistible natural phenomenon" referred to an "exceptional" and "inevitable" natural phenomenon, as in contrast to a regular natural phenomenon such as a typhoon under which a ship could normally stay unharmed</p> <p>In response to Ms Audrey EU's query about the exemption provided under clause 7(c), the Administration's clarification that the shipowner would be granted exemption from liability if the pollution damage was due wholly to the negligence of the person who suffered the damage</p>	
003330 – 004248	Chair Administration	<p><u>Continuation of clause-by-clause examination of the Bill (CB(3)692/08-09 and CB(1)2631/08-09(03))</u></p> <p><u>Clauses 8 – 14</u></p> <p>Members did not raise any query</p>	
004249 – 004452	Chair Administration	<p><u>Clause 15 – Application for insurance certificates etc.</u></p> <p>In response to the Chair's query on the reference of "an authorized person", the Administration's advice that, in accordance with the current practice, it would authorize the classification societies, which had strong international network, to issue the certificates</p>	
004453 – 005139	Chair Administration Ms Cyd HO	<p><u>Clause 16 – Power of Director or authorized persons to issue insurance certificates etc.</u></p> <p>Ms Cyd HO's opinion that it was more appropriate to translate the word "obligations" in Chinese as "責任" than "義務". The Administration's advice that it would check the usage in the Bunker Oil Convention and revert</p> <p>The Chair's query whether the shipowners had sufficient knowledge about the abilities of the insurers to meet the required obligations under the insurance. The</p>	

Time marker	Speaker	Subject(s)	Action required
		Administration's advice that the issuing authority only recognized policies issued by authorized insurance companies which were mostly members of the International Group of Protection and Indemnity Clubs. Owners of ships travelling between Hong Kong and the Mainland would be advised to procure insurance from authorized insurers. In response to the Chair's further concern, the Administration's assurance that procuring insurance by shipowners was a current practice and they should have the relevant knowledge about the insurers	
005140 – 005515	Chairman Administration Ms Cyd HO	At this juncture, the Chairman resumed his chair <u>Clause 17 – Cancellation and delivery up of insurance certificates issued by Director or authorized persons</u> In response to Ms Cyd HO's concern about the outcome if the ranking of the insurer providing the insurance dropped after a certificate was issued, the Administration's advice that the Director might cancel the certificate under clause 17(3) if there was doubt as to, inter alia, whether the person providing the insurance would be able to meet his obligations under the insurance	
005516 – 005649	Chairman Administration	<u>Clause 18 – Jurisdiction of Hong Kong courts to enforce claims arising from pollution damage in Hong Kong and in any other Bunker Oil Convention places</u> In response to the Chairman's query, the Administration's clarification that if the pollution damage was caused far away from Hong Kong, for example, in the waters of Europe, no action could be brought in the court of Hong Kong. However, if the pollution damage was caused, for example, in the waters of both Hong Kong and Macau, an action might be brought in a Hong Kong court to enforce a claim arising from the damage caused in both places	
005650 – 010050	Chairman Administration	<u>Clauses 19 – 22</u> Members did not raise any query	
010050 – 010831	Chairman Administration Ms Miriam LAU	<u>Part 5 - Miscellaneous</u> <u>Clause 23 – Director may grant exemptions</u> The Chairman's enquiry whether the power of the Director to grant exemptions to any person or ship from the application of any provision of clause 13 or 14 would be delegated to other officials The Administration's clarification that (a) the exemption would be granted on a discretionary basis under exceptional circumstances, say, to provide temporary shelter for ships during adverse weather conditions on humanitarian grounds; (b) the Government would duly assess the condition of the	

Time marker	Speaker	Subject(s)	Action required
		<p>ships in question before granting the exemptions and put in place necessary measures to prevent oil spillage; and</p> <p>(c) under normal circumstances the exemption power would be exercised by the Director or the Deputy Director</p> <p>Ms Miriam LAU's view that exemption should be granted only when necessary and under stringent considerations and practices, including that only the Director (or the officer acting in the post) could grant the exemption</p>	<p>The Administration to provide information as required in paragraph 4 of the minutes</p>
<p>010832 – 012033</p>	<p>Chairman Administration Ms Miriam LAU Ms Cyd HO Assistant Legal Adviser (ALA)</p>	<p><u>Clause 24 – Notification of decisions of Director etc.</u></p> <p>Ms Cyd HO and Ms Miriam LAU's concern about the method of serving notice as the Director should notify the applicant in writing timely if he decided to refuse to grant the said exemption under clause 23. Ms HO's enquiry whether the Government could serve the notice using electronic mode</p> <p>The Administration's response that under normal circumstances, the Director would inform the owner or the master of the vessel via electronic means his decision not to grant the exemption under clause 23, and then serve a notice in writing on the applicant setting out the decision and the reasons for the decision</p> <p>Ms Cyd HO's concern whether the Government would be held responsible for the adverse impact caused as a result of the delay or failure in serving the notice to the applicant. The Administration's observation that if a person was aggrieved by a decision of the Director to refuse to grant an exemption according to clause 23, the person was entitled under clause 29 to appeal to the Administrative Appeals Board against the decision</p> <p>Ms Miriam LAU's concern about the liability of the Government for the pollution damage, if any, caused by the ship which was given the exemption to enter Hong Kong waters without the insurance certificate satisfying the requirements of the Bunker Oil Convention. In response, the Administration's confirmation that there was no provision under the Bill to exempt the Government from the liability for pollution damage in such circumstances. The Bill did not have the effect of changing the extent of Government's liability in the circumstances mentioned and other applicable law and procedure should continue to apply. The Administration's further view that a person aggrieved by a decision of the Director to grant an exemption under clause 23 might apply for judicial review against the decision</p> <p>The Chairman's enquiry whether the aggrieved party had to apply for judicial review before seeking redress and compensation from the Government</p>	

Time marker	Speaker	Subject(s)	Action required
		ALA's advice that the aggrieved party would not normally be required to apply for judicial review of the Director's decision in question before he issued civil claim for compensation against the Government	
012034 – 012232	Chairman Administration	<p><u>Clause 25 – Power of Director to authorize certain persons as authorized persons</u></p> <p>In reply to the Chairman's enquiry, the Administration's clarification that authorized persons under clause 25 in fact referred to classification societies which would issue insurance certificates for ships registered in Hong Kong</p>	
012233 – 012430	Chairman Administration	<p><u>Clauses 26 – 29</u></p> <p>Members did not raise any query</p>	
012431 – 014410	Chairman Administration Ms Miriam LAU Ms Cyd HO	<p><u>Clause 30 – Service of notice etc.</u></p> <p>Ms Miriam LAU's concern how a notice could be served if the party concerned was an overseas registered company, which was not an individual or a company as defined in the Companies Ordinance (Cap. 32), nor was it a body corporate or a partnership as described in clause 30(b) to (e)</p> <p>The Administration's advice that in actual practice, to facilitate timely execution of the decision to grant an exemption or otherwise, the Director would inform the master of the ship seeking exemption of his decision by wireless telecommunications in advance before sending the formal notice in writing either to the overseas registered company's appointed agent in Hong Kong, if any, or to the correspondence address provided by the company</p> <p>Ms Miriam LAU's highlight of the importance of serving the notice promptly as the ship concerned might appeal against the Director's decision, and her suggestion that clause 30 should cover the possibility of serving a notice etc by electronic means</p> <p>Ms Cyd HO's echo of the view as the inclusion of modern channels of communication would enhance efficiency in serving notice etc and insure the Government from the liability for possible adverse consequences arising from delayed service of notice, especially in urgent situations</p> <p>The Administration's response that while clause 30 stated the means by which a notice or other document would be regarded as having been duly served or sent, it did not preclude other means of communication for the purpose. The Administration's reference to the generality of the provisions under the existing Electronic Transactions Ordinance (Cap. 553) (ETO) in respect of service of documents, which would automatically apply to all legislation unless specified otherwise. As such, electronic records pertaining to the execution of the Bill would have the same</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>legal recognition as long as they fulfilled the ETO requirements</p> <p>Ms Miriam LAU and Ms Cyd HO's suggestions that reference to the application of ETO should be made in clause 30 to facilitate compliance and enforcement. Ms LAU's view that the current drafting would appear that only under the conditions stated in clause 30(a) to (e) would a notice/document be regarded as having been duly served. Ms HO's suggestion that the Administration might consider adding a standard provision in respect of the general application of ETO for all enactments to facilitate readers' reference</p> <p>The Administration's advice that similar to Interpretation and General Clauses Ordinance (Cap. 1), ETO was an enactment of general application and there was no need to revise clause 30 as suggested. Nevertheless, the Administration agreed to consider adding a sub-section under clause 30 to make reference to the application of ETO</p>	<p>The Administration to follow up as required in paragraph 5 of the minutes</p>
<p>014411 – 014550</p>	<p>Chairman Administration</p>	<p><u>Clauses 31 and 32</u></p> <p>Members did not raise any query</p>	
<p>014551 – 015140</p>	<p>Chairman Administration Ms Miriam LAU Ms Cyd HO</p>	<p><u>Clause 33 – Power to make regulation</u></p> <p>The Administration's briefing on the proposed fee regulation to be made under the Bill (CB(1)2647/08-09(01)) that it proposed a fee of HK\$535 for the application for the insurance certificate to be issued by the Director under clause 16 of the Bill</p> <p>Ms Miriam LAU's concern that the proposed fee, which was payable once a year, was relatively high. Her request that the Administration should take into account the viability of small shipowners to consider lowering the proposed fee</p> <p>The Administration's response that the proposed fee was set in line with the "user-pay" principle and it had to cover the screening of the application and subsequent monitoring. The fee level was moderate when compared to that charged by some other jurisdictions</p> <p>Ms Cyd HO's remark that the service in question might not justify the proposed cost. Ms Miriam LAU's comment that the "user-pay" principle should not cover the cost of possible services in future</p> <p>The Chairman's advice that the matter on the proposed fee regulation would be discussed by the Panel on Economic Development. Ms Miriam LAU's request for the Administration to include in the Panel paper the application fees payable in other jurisdictions</p>	<p>The Administration to follow up as required in paragraph 6 of the minutes</p> <p>The Administration to follow up as required in paragraph 6 of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
015141 – 015700	Chairman Administration Ms Miriam LAU ALA	<p><u>Part 6 – Consequential and related amendments (CB(1)2631/08-09(04) – marked-up copy of related ordinances prepared by the Legal Service Division)</u></p> <p><u>Clauses 34 – 38</u></p> <p>Members did not raise any query</p>	
015701 – 020805	Chairman Administration Ms Miriam LAU	<p><u>Clause 39 – Section substituted (under Oil Pollution (Land Use and Requisition) Ordinance)</u></p> <p>Ms Miriam LAU's enquiry about the circumstance(s) under proposed section 10(6)b in clause 39 which defined "owner" in relation to a vessel as "the person registered as the owner of the vessel or, if no person was registered as the owner of the vessel, the person who owned the vessel"</p> <p>The Administration's explanation that unlike ocean-going ships, local vessels were not required to register with the Marine Department but they had to apply for licences for operation within Hong Kong waters. Information on the identities of the vessel owners was kept by the Marine Department. The ownership of a vessel would in any case be a matter of facts</p> <p>Ms Miriam LAU's consideration that proposed section 10(6)b in clause 39 related to the registration of a vessel and her doubt how the owner of a local vessel could be traced and identified given the licence records were not documents made available for checking by the public. In this connection, her enquiry whether the Marine Department would answer public enquiries regarding verification of the identities of vessel owners</p> <p>The Administration's response that when the vessel owner of a ship was held liable for any pollution damage caused in Hong Kong, the Administration had the obligation to disclose the particulars of the vessel owner in question</p>	The Administration to provide information as required in paragraph 7 of the minutes
020806 – 020830	Chairman Administration Ms Miriam LAU	<p><u>Clause 16 – Power of Director or authorized persons to issue insurance certificates etc</u></p> <p>The Administration's supplementary information that the term "obligation" in the Chinese text (i.e."義務") had adopted the wordings used in the Bunker Oil Convention</p>	
020831 – 020855	Chairman	Date of next meeting	