

立法會
Legislative Council

LC Paper No. CB(1)267/09-10
(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 fourth meeting on
Monday, 5 October 2009, at 10:45 am
in Conference Room B of the Legislative Council Building**

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

Members absent : Hon Miriam LAU Kin-yee, GBS, JP
Hon CHEUNG Hok-ming, GBS, JP

**Public Officers
attending** : Agenda Item I

Miss Emmy WONG
Acting Deputy Secretary for Transport and Housing
(Transport)

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

Dr Stephen LI
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

Ms Angie LI
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

Action

I Meeting with the Administration

(LC Paper No. CB(1)2701/08-09(01) -- List of follow-up actions arising from the discussion at the meeting on 28 September 2009 prepared by the Legislative Council Secretariat

LC Paper No. CB(1)2701/08-09(02) -- Administration's response to LC Paper No. CB(1)2701/08-09(01)

LC Paper No. CB(1)2701/08-09(03) -- Draft Committee Stage amendments proposed by the Administration

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

LC Paper No. CB(3)692/08-09 -- The Bill)

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

Follow-up actions required to be taken by the Administration

Admin 2. In response to 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 Administration undertook to stipulate in the relevant internal guidelines that such power would be restricted to the Director or the officer acting in the post, and the Secretary for Transport and Housing would also clearly state such intention in her speech during the resumption of the Second Reading debate on the Bill.

3. The Administration briefed members on the proposed Committee Stage amendments on the Bill (LC paper No. CB(1)2701/08-09(03)). The Bills Committee did not raise any objection to these proposed amendments.

Way forward

4. The Chairman concluded that the Bills Committee had completed examination of the Bill and would report its deliberations to the House Committee on 23 October 2009. The Bills Committee noted that the deadline for giving notice for moving Committee Stage amendments to the Bill would be 2 November 2009, and the Administration would resume the Second Reading debate on the Bill at the Council meeting on 11 November 2009.

II Any other business

5. There being no other business, the meeting ended at 11:20 am.

**Proceedings of the fourth meeting of
Bills Committee on Bunker Oil Pollution (Liability and Compensation) Bill
on Monday, 5 October 2009, at 10:45 am
in Conference Room B of the Legislative Council Building**

Time marker	Speaker	Subject(s)	Action required
000000 – 000233	Chairman	The Chairman's introductory remarks	
000234 – 001614	Chairman Administration Ms Cyd HO Ms Audrey EU Assistant Legal Adviser (ALA)	<p>Briefing by the Administration on its response to concerns raised at the meeting on 28 September 2009 (CB(1)2701/08-09(02))</p> <p><u>Clause 23</u></p> <p>Ms Audrey EU's view that clause 23 should set out clearly the circumstances and criteria under which the exemption would be granted. Her observation that clause 23 had stated that the Director of Marine (Director) might give exemption "in a particular case" which was different from "in exceptional circumstances" as described in CB(1)2701/08-09(02). Her enquiry about the definition of "exceptional circumstances" and examples of such</p> <p>The Administration's explanation that exemption might be granted under "exceptional circumstances" for ships without the insurance certificates during inclement weather conditions; or for ships registered in a Bunker Oil Convention place, which had kept on board an insurance certificate issued by an authority other than the government of that place before the competent authority had ratified the Convention</p> <p>In reply to Ms Audrey EU's enquiry, ALA's advice that the current drafting of clause 23 had expressly confined the exemption power to be exercised by the Director or the officer acting in the post, and the Director was ultimately responsible for the decision despite his decision might have been based on the assessment of his staff</p> <p>The Administration's response that while the Director would be ultimately accountable for the decisions pertaining to the execution of the Bill, there were internal guidelines in the Marine Department governing the delegation of the various powers conferred on the Director by the Bill so as to enhance administrative efficiency. This notwithstanding, the Administration's agreement that it would stipulate in the internal guidelines the power of exemption under clause 23 would be exercised solely by the Director or the officer acting his post. Ms EU's suggestion for the Administration to set out the circumstances and criteria</p>	<p>The Administration to follow up as required in paragraph 2 of the minutes</p>

Time marker	Speaker	Subject(s)	Action required
		<p>of granting such exemption in the internal guidelines</p> <p>At the request of the Chairman and Ms Audrey EU, the Administration's undertaking to include in the speech of the Secretary for Transport and Housing in the Second Reading debate on the Bill a statement on the exercise of exemption power under clause 23</p> <p><u>Clause 30</u></p> <p>As the Administration would not amend clause 30 to include an express provision on the application of the Electronic Transactions Ordinance (ETO) (Cap. 553) to the Bill, Ms Cyd HO's suggestion that the Administration should review the drafting practice for all enactments in respect of the general application of ETO where appropriate, having regard to the need to ascertain whether a notice etc would be regarded as having been duly served by electronic means, especially in urgent circumstances. For example, a standard provision could be added in relevant legislation to facilitate readers' reference. The Transport and Housing Bureau's response that they would refer members' views to the Law Drafting Division of the Department of Justice for reference</p>	
001615 – 001814	Administration Chairman Ms Audrey EU	<p><u>Clause 33</u></p> <p>As the Administration would seek to consult the Panel on Economic Development (EDEV Panel) on the proposed application fee for the issuance of insurance certificates, Ms Audrey EU's concern whether this might delay the implementation of the Bill</p> <p>The Administration's advice that it would arrange consultation with the EDEV Panel as soon as practicable, followed by tabling of the proposed subsidiary regulation in the Legislative Council. Taking these procedures into consideration, the Administration aimed at having the Bill to take effect in January 2010 at the earliest</p>	
001815 – 002854	Chairman Administration Miss Tanya CHAN Mr WONG Yung-kan	<p><u>Clause 39</u></p> <p>Referring to the Administration's response in CB(1)2710/08-09(02) that information on the "owner" of a vessel would normally be released if the request was made for civil proceedings, Miss Tanya CHAN's view that to avoid incurring unnecessary expenses, the aggrieved party might decide whether to initiate legal action after ascertaining the identity of the owner of the vessel as it might be owned by a "shell" company. Her enquiry whether the owner's information would be released if the request for disclosure was made by the aggrieved party before commencing legal action</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration's response that as information relating to the owner of a vessel might include personal data, the Marine Department would, upon a request for disclosure of an owner's information, consider the request by reference to the Code on Access to Information and/or the requirements under the Personal Data (Privacy) Ordinance (Cap. 486) (PDPO), and release the information as appropriate. In the past, many such requests were made via lawyers</p> <p>Miss Tanya CHAN's concern whether the aggrieved party could make a formal request for information disclosure himself before deciding whether to seek legal assistance. Mr WONG Yung-kan's view that the Administration should consider requests made by local organizations such as the rural committees on behalf of the aggrieved parties</p> <p>The Administration's response that if the request arose from an incident in which the applicant was an affected party, the Marine Department would handle the request for information disclosure in accordance with the requirements under PDPO. As the Marine Department would be able to ascertain whether the applicant was the aggrieved party during its investigation into the incident causing oil pollution, it might not be necessary for the applicant to make the request through a lawyer</p> <p>Mr WONG Yung-kan's remark that apart from disclosing the information, there was an obligation on the part of the Government to assist the aggrieved parties in seeking redress for the oil pollution damages they had suffered in the incidents concerned</p>	
002855 – 002953	Chairman Administration	<p><u>Committee Stage amendments</u></p> <p>Members did not raise any query</p>	
002954 – 003104	Chairman Administration	<p><u>Continuation of clause-by-clause examination of the Bill Clause 40 – Schedule amended</u></p> <p>Members did not raise any query</p>	
003105 – 003225	Chairman	The Chairman's concluding remarks	