

**Paper for the House Committee Meeting
on 29 May 2009**

**Legal Service Division Report on
Merchant Shipping (Safety) (Amendment) Bill 2009**

I. SUMMARY

1. **Objects of the Bill** To amend the Merchant Shipping (Safety) Ordinance (Cap. 369) (the Ordinance) and its subsidiary legislation to, among other things –
 - (a) enable the use of a "Direct Reference Approach" in making subsidiary legislation under the Ordinance to achieve timely implementation of marine safety-related international conventions; and
 - (b) to adapt, remove or replace outdated references with colonial connotation in order to bring these provisions into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region.

2. **Comments** Most of the proposed amendments are related to the adaptation of law, to remove references to British enactments or obsolete references relating to the United Kingdom, and to amend the discrepancies between the meaning of the Chinese and English texts.

The more important proposed amendments are to introduce a "Direct Reference Approach" to enable timely implementation of the amendments to the relevant international conventions, and to bring the provisions of the Ordinance and its subsidiary legislation in line with the relevant international agreements.

3. **Public Consultation** The Administration has consulted the Shipping Consultative Committee, which includes a representative from the Hong Kong Shipowners' Association. They are in support of the proposed amendments to enable the more timely implementation of marine safety-related international agreements in Hong Kong.

4. **Consultation with LegCo** The Administration consulted the Panel on Economic Development at its meeting on 30 March 2009. Members relayed the industry's support for the adoption of the Direct Reference Approach. They also expressed concern on the slow process in adapting outdated references.

5. **Conclusion** No difficulties in the legal and drafting aspects of the Bill have been identified. Subject to Members' views, the Bill is ready for resumption of the Second Reading debate.

II. REPORT

Objects of the Bill

To amend the Merchant Shipping (Safety) Ordinance (Cap. 369) (the Ordinance) and some of its subsidiary legislation to, among other things –

- (a) enable the use of a "Direct Reference Approach" in making subsidiary legislation under the Ordinance to achieve timely implementation of marine safety-related international conventions; and
- (b) to adapt, remove or replace outdated references with colonial connotation in order to bring these provisions into conformity with the Basic Law and with the status of Hong Kong as a Special Administrative Region.

LegCo Brief

2. Members may refer to the LegCo Brief dated 13 May 2009 issued by the Transport and Housing Bureau (File Ref: MA 80/27) for further information.

Date of First Reading

3. 26 May 2009.

Comments

General Observations

4. Most of the proposed amendments are related to the adaptation of law, to remove references to British enactments or obsolete references relating to the United Kingdom, and to amend the discrepancies between the meaning of the Chinese and English texts.

5. The more important proposed amendments are to introduce a "Direct Reference Approach" to enable timely implementation of the amendments to the relevant international conventions, and to bring the provisions of the Ordinance and its subsidiary legislation in line with the relevant international agreements.

Enabling the Timely Implementation of International Agreement

6. According to the LegCo Brief, Hong Kong has an international obligation to implement the latest amendments to the marine safety-related conventions adopted by the International Maritime Organization (IMO) which are applicable to Hong Kong and are implemented in Hong Kong through the Ordinance and its subsidiary legislation.¹

7. The Administration explains that amendments to the international conventions covering a wide range of technical details related to marine safety are made every year by IMO. As a result, the subsidiary legislation made under the Ordinance needs to be amended to implement the amended conventions. The Administration observes that there is a time gap between the making of the amendments by IMO and the amendments of the subsidiary legislation.

8. To facilitate timely implementation, clause 31 of the Bill proposes to amend section 112B(i) of the Ordinance to introduce a "Direct Reference Approach". At present, section 112B provides that, among other things, for the purpose of giving effect to any international agreement applicable to Hong Kong relating to matters for or in relation to which provision may be implemented in Hong Kong by regulations made under the Ordinance, such regulations may set out those convention provisions. The effect of clause 31 is that instead of setting out the convention provisions, a reference may be made to the relevant convention provisions in the regulations, signifying their applicability to Hong Kong.

9. According to the Administration when consulting the Panel of Economic Development at its meeting on 30 March 2009, the Direct Reference Approach has been previously adopted in the Merchant Shipping (Control of Pollution by Noxious Liquid Substances in Bulk) Regulations (Cap. 413 sub. leg. B)², Merchant Shipping (BCH Code) Regulations (Cap. 413 sub. leg. D), and Merchant Shipping (Security of Ships and Port Facilities) Ordinance (Cap. 582).

10. In its reply to an enquiry made by the Legal Service Division, the Administration indicated that the Marine Department (MD) would issue a Merchant Shipping Information Notice (MSIN) to inform the shipping industry of the way to access the relevant conventions and of future amendments to the conventions. The MSIN would be uploaded on MD's website. MD would also make available a copy of

¹ The conventions are: the International Convention for the Safety of Life at Sea, the International Convention on Load Lines 1966 and the International Regulations for preventing Collisions at Sea 1972.

² Regulation 24(1)(b) provides that –

"(1) Upon satisfactory completion of an initial or periodical survey the Director shall issue to a ship which complies with the relevant requirements of these regulations (except one to which a BCH Code Certificate or an IBC Code Certificate is to be issued) –

...

(b) *in the case of any other ship, an INLS Certificate, in the form set out in Appendix V to Annex II of MARPOL 1973/78,...*"

MARPOL 1973/78 means the International Convention for the Prevention of Pollution from Ships, 1973, as amended.

the relevant conventions for reference by members of the public at its office during normal office hours free of charge.

Bringing Certain Requirements Into Line with the Relevant International Agreements

11. Clauses 3(4), 10 to 12, 14(5) and (6), 15 to 17 propose to amend the various sections of the Ordinance to bring them in line with the provisions of the International Convention for the Safety of Life at Sea and the International Convention on Load Lines.

Transferring Certain Statutory Powers and Functions

12. Certain powers and functions in the Ordinance are vested in the "Governor" or "Governor in Council". The Bill proposes to transfer –

- (a) the power to specify ships to be surveyed from the "Governor" to the Director of Marine (clause 7);
- (b) the power to make regulations as to fees on surveys from the "Governor in Council" to the Financial Secretary (clause 30(1), (3) and (4)); and
- (c) the power to give directions to the Director of Marine and to any public officer with respect to the performance or exercise of their respective duties or powers under the Ordinance from the "Governor" to the Secretary for Transport and Housing (clause 32).

Adapting Certain Provisions to Bringing Them into Conformity with the Basic Law and with the Status of Hong Kong as a Special Administrative Region

13. The Bill proposes to substitute references of "the Governor" (other than those mentioned in paragraph 12 above) in the Ordinance (Clauses 8, 25(1), 26, 29 and 36) and in the Merchant Shipping (Court of Survey) Regulations (Cap. 369 sub. leg. A) (Clauses 39, 40(1)(a), (2)(a), (3)(a) and (4)(a) and 41) with references to "the Chief Executive".

14. Clauses 22, 23 and 28 of the Bill propose to substitute the references to "the Crown" in the Ordinance with references to "the Government".

Removing or Replacing References to British Enactments and Certain Obsolete References Relating to the United Kingdom

15. Clauses 3(2), 5, 30(8), 33, 34(1)(b) and 42(3) propose to remove the references to "Merchant Shipping Acts" of the United Kingdom in the Ordinance and in the Merchant Shipping (Safety) (Cargo Ship Safety Equipment Survey) Regulations (Cap. 369 sub. leg. T).
16. Clause 3(3) proposes to replace the reference to "British measurement" by a reference to local legislation.
17. Clauses 4(2) and 14(3) propose to remove the references to "Her Majesty in Council" in the Ordinance.
18. Clauses 18, 19(1) and 21 propose to remove references to "British ship" in the Ordinance.
19. Clause 25(2) proposes to remove reference to "British mercantile marine" in the Ordinance.

Removing Discrepancies in Meaning between the Chinese and the English Texts of Certain Provisions

20. The Bill seeks to amend the Chinese text of the Ordinance and its subsidiary legislation to remove discrepancies in meaning between the Chinese text and English text (clauses 19(2) and 20), and to achieve consistency with the Ordinance (clauses 43 to 45 and 47).

Related, Consequential and Other Minor Amendments

21. Part 4 of the Bill proposes to amend the descriptions of the International Convention for the Safety of Life at Sea 1974 and International Convention on Load Lines 1966 to bring them in line with their descriptions as proposed to be amended by clause 3 of the Bill in –
- (a) the Merchant Shipping (BCH Code) Regulations (Cap. 413 sub. leg. D);
 - (b) the Merchant Shipping (IBC Code) Regulations (Cap. 413 sub. leg. E);
 - (c) the Merchant Shipping (Local Vessels) Ordinance (Cap. 548);
 - (d) the Merchant Shipping (Local Vessels) (Safety and Survey) Regulation (Cap. 548 sub. leg. G); and
 - (e) the Merchant Shipping (Security of Ships and Port Facilities) Ordinance (Cap. 582).

22. The Bill also makes minor amendments, such as defining "Secretary" as the "Secretary for Transport and Housing" in section 2(1) of the Ordinance, and to substitute references of the "Secretary for Transport and Housing" by "Secretary".

Commencement

23. Clause 2 provides for the commencement of the Bill in two stages –

- (a) Part 1, clauses 3(5), 6 to 8, 13, 18-29, 30(1) – (7), 31, 32, 34(2), 35, 36, 38 – 41, 42(1) and (2), 44(3) and 46(1) and (3) shall come into operation on the day on which the Bill is published in the Gazette after enactment. Apart from clause 31 introducing the Direct Reference Approach, these provisions mainly concern the adaptation of law, and to replace the "Secretary for Transport and Housing" with the "Secretary";
- (b) clauses 3(1) – (4) and (6), 4, 5, 9 – 12, 14 – 17, 30(8), 33, 34(1), 37, 42(3), 43, 44(1), (2) and (4), 45, 46(2) and 47 and Part 4 shall come into operation on a day to be appointed by the Secretary for Transport and House by notice published in the Gazette. These provisions mainly concern amendments to bring the provisions of the Ordinance in line with the relevant international agreements.

Public Consultation

24. According to the LegCo Brief, the Administration has consulted the Shipping Consultative Committee, which includes a representative from the Hong Kong Shipowners' Association. They are in support of the proposed amendments to enable the more timely implementation of marine safety-related international agreements in Hong Kong.

Consultation with LegCo

25. The Administration consulted the Panel on Economic Development at its meeting on 30 March 2009. Members relayed the industry's support for the adoption of the Direct Reference Approach. They also expressed concern on the slow process in adapting outdated references. Members may refer to the Administration's paper for the Panel issued in March 2009 (CB(1)1111/08-09(03)) and the minutes of the Panel's meeting (LC Paper No. CB(1)1345/08-09) for further information.

Conclusion

26. No difficulties in the legal and drafting aspects of the Bill have been identified. Subject to Members' views, the Bill is ready for resumption of the Second Reading debate.

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